



GUIDELINES TO THE INCLUSIONARY ZONING REGULATIONS ORDINANCE



CITY OF DUBLIN

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1 Introduction

This document constitutes the Guidelines (these “Guidelines”) to the City’s Inclusionary Zoning Regulations Ordinance (the “Ordinance”) set forth in Chapter 8.68 of the City’s Municipal Code. The City Council’s purpose in adopting the Ordinance is to increase the diversity of housing prices/rents in the community and ensure that the range of prices/rents continues over time.

The purpose of these Guidelines is to assist in implementing the Ordinance. The Guidelines are intended to:

- Assist developers early in the development process to ensure that Residential Development projects are designed from the beginning in compliance with the requirements of the Inclusionary Zoning Regulations Ordinance;
- Inform developers, management firms, and owners of BMR Units and BMR Secondary Units of the procedures for selling, reselling, and renting BMR Units and BMR Secondary Units; and
- Provide households interested in renting or purchasing a BMR Unit with an overview of the eligibility requirements, the application and screening process, the restrictions on ownership, and the procedures for reselling a BMR Unit.

These Guidelines cover both the Below Market Rate (BMR) Ownership Program and the BMR Rental Program. While these programs share many of the same requirements, they involve distinct procedures and processes. The document is divided by each program for ease of use.

These Guidelines should be read in conjunction with the Ordinance. While every effort has been made to ensure that these Guidelines are consistent with the Ordinance, if there are any conflicts between these Guidelines and the Ordinance, the terms of the Ordinance shall prevail. In addition, the provisions of a Housing Agreement or Resale Restriction Agreement (or like agreement) recorded against a BMR Unit shall prevail over any general requirements of the Ordinance or these Guidelines.

Users of these Guidelines are encouraged to seek their own legal counsel to aid in understanding the requirements of the City’s Inclusionary Program. For any general questions regarding these Guidelines, users may call the City’s Housing Division at (925) 833-6610 or email HousingInfo@Dublin.ca.gov.

The City will review and, to the extent necessary, update these Guidelines annually. The Community Development Director may make interim revisions, interpretations, or clarifications to these Guidelines. Any such revision, interpretation, or clarification shall not become effective until posted on the City’s website.

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1.1 Definition of Terms

1.1.1 General Guidelines Terms

Affordable Housing Agreement: An agreement between the developer and the City for a Residential Development project which sets forth the developer's Inclusionary Obligation and the method by which the developer will comply with the requirements of the Ordinance. The agreement is recorded against the property(s) containing the BMR Units and requires, among other things, that the developer require purchasers of BMR Units to execute and record a Resale Restriction Agreement and Option to Purchase and Performance Deed of Trust. For rental BMR Units, the agreement establishes the rules and requirements for property management and BMR Unit administration.

Area Median Income or AMI: The Area Median Income adjusted for household size as published annually by the California Department of Housing and Community Development (HCD), based on the annual income calculations completed by the US Department of Housing and Urban Development (HUD).

Below Market Rate (BMR) Unit: A unit that is reserved for rent or for sale to Very Low-, Low-, or Moderate-Income households. BMR Units have restrictions recorded against them to ensure they remain affordable for a period as set forth in the Housing Agreement or Resale Restriction Agreement. Owner-occupied units are deemed affordable if the sales price results in annual Housing Expenses that do not exceed 35% of the maximum income level for Low- or Moderate-Income households, as applicable, adjusted for household size. Renter-occupied BMR Units are deemed affordable if they meet the annually updated maximum rent price restrictions as established in the Affordable Housing Agreement for each development.

City: The City of Dublin.

City Council: The legislative body of the City of Dublin.

City Staff: An employee or designee of the City of Dublin responsible for actions related to the Ordinance or these Guidelines.

(These) Guidelines: These Guidelines to the Inclusionary Zoning Regulations.

HCD: The California Department of Housing and Community Development.

HOA: Homeowners association.

Homebuyer Education Workshop for Below Market Rate Buyers: A HUD-approved 8-hour course designed to provide basic education specific to BMR Homebuyers. Refer to the City's website (www.dublin.ca.gov) for organizations that may offer this course. The date on the completion certificate for the class must be within 6 months of the date of application for a BMR Unit.

Housing Expenses: The sum of mortgage principal, interest, private mortgage insurance, taxes, insurances, and HOA dues, as applicable.

HUD: The US Department of Housing and Urban Development.

1. Introduction

Inclusionary Obligation: The number of BMR Units a developer is required to construct (or pay fees in lieu thereof) in a Residential Development project to comply with the Inclusionary Zoning Regulations.

Inclusionary Zoning Regulations Ordinance: Chapter 8.68 of the City of Dublin Municipal Code.

In-Lieu Fee: A fee paid by a developer in lieu of constructing BMR Units to satisfy up to 40% of its inclusionary obligation.

Legal Resident: A citizen or other national of the United States or a qualified alien as defined by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

Low Income: Total Household Income that is 51% to 80% of AMI, adjusted for actual household size.

Marketing and Management Plan: A plan required for rental Residential Developments that contains the information set forth in **Section 5.2** of these Guidelines.

Marketing and Sales Plan: A plan required for ownership Residential Developments that contains the information set forth in **Section 4.4.1** of these Guidelines.

Maximum Income: The maximum income for an income category (Very Low, Low, or Moderate) determined periodically by HCD based on AMI. See **Section 3.2.1** of these Guidelines for Maximum Incomes.

Moderate Income: Total Household Income that is 81% to 120% of AMI, adjusted for actual household size.

Qualified Household: Can include any group of persons, so long as such persons, when viewed as a whole, satisfy the eligibility requirements for a household. For an ownership BMR Unit or for a rental BMR Unit, a “qualified household” means a household that satisfies the requirements listed in **Section 3** of these Guidelines.

Residential Development: Includes, without limitation, detached single-family dwellings, multiple-dwelling structures, groups of dwellings, condominium or townhouse developments, condominium conversions, cooperative developments, mixed-use developments that include housing units, and residential land subdivisions intended to be sold or rented to the general public.

Secondary Unit: A legal secondary dwelling unit that has been approved by the City and that is reserved for occupancy by Very Low-, Low-, or Moderate-Income households at rents affordable to such households.

Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants: An agreement between the City and the owner of a Secondary Unit which is recorded against the property containing the Secondary Unit and requires, among other things, that the Secondary Unit be reserved for occupancy by Very Low-, Low-, or Moderate-Income households for an amount of time specified in the Affordable Housing Agreement or Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants.

Senior: A person 62 years of age or older for the purpose of qualifying for Preference Points.

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Special Assessment: A proportional fee charged to the BMR Unit Owner by an HOA to cover the cost of physical improvements to the entire building or common areas.

Total Household Income: All Gross Household Income and assets received during a calendar year (as calculated pursuant to **Section 3.2.2**).

Very Low Income: Total Household Income that is 50% or less of AMI, adjusted for actual household size.

Veteran: A person who served in the active military, naval, or air service and who was discharged or released therefrom under conditions other than dishonorable, for the purpose of qualifying for Preference Points.

1.1.2 Terms for Ownership BMR Units

Administration Fees: Fees charged by the City for BMR Unit–related transactions, including;

- An administrative transaction fee charged to the BMR Unit Owner/Seller for all sales and resales of BMR Units;
- An administrative transaction fee charged to the BMR Unit Owner or BMR Secondary Unit Owner for requests to subordinate the Resale Restriction Agreement and/or Performance Deed of Trust or requests to refinance a BMR Unit.

Approved Capital Improvements: Capital improvements to BMR Units that have been approved by the City pursuant to the procedure set forth in **Section 4.6.5**. The cost of such improvements may be added to the resale price of the BMR Unit.

BMR Unit Owner: A household that owns a BMR Unit.

CalHFA: The California Housing Finance Agency.

Consent Agreement: An agreement between the City and a Qualified Household which authorizes the City to access and review the Qualified Household’s credit reports or other personal or financial information to verify a Qualified Household’s compliance with the Resale Restriction Agreement, the Ordinance, and these Guidelines. This agreement must be executed by purchasers of ownership BMR Units prior to the close of escrow.

Domestic Partners: Two unmarried people, at least 18 years of age, who have lived together continuously for at least 1 year and who are jointly responsible for basic living expenses incurred during their domestic partnership. Domestic partners may not be persons related to each other by blood or adoption such that their marriage would be barred in the State of California. The City will consider an individual to be Owner’s domestic partner, exclusively for purposes of the Program and this Agreement, upon Owner’s presentation to the City of an affidavit or other acceptable evidence of the domestic partnership. No legal rights, obligations, or incidents of domestic partnership or marriage, as recognized under any local, state, or federal law, are granted, established, or implied by this Agreement or as a result of Owner’s and Owner’s household’s participation in the Program.

First-Time Homebuyer: A person who has not owned any interest in real property during the three-year period prior to the date of the household’s application to qualify for purchase of a BMR Unit, including without limitation, real property in which a household member’s name appears on title

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regardless of whether the member's interest in such property results in a financial gain, such property is located in another state or country, or the member has occupied such property as his or her primary residence. If any person has had his or her name on title of a property, but the property was sold more than 3 years prior to the date of application, the person is considered a First-Time Homebuyer.

Immediate Family Member: A mother, father, brother, sister, child, grandparent, or grandchild.

Performance Deed of Trust: A deed of trust recorded against a BMR Unit by the City which secures a BMR Unit Owner's compliance with the Resale Restriction Agreement and Option to Purchase.

Principal Residence: The place where a person resides on a substantially full-time basis during not less than 10 months per year. Children attending college and not living at home as their Principal Residence may not be counted as a household member.

Priority List: A list that ranks Qualified Households based on the number of Preference Points received.

Resale Restriction Agreement and Option to Purchase, also known as Resale Restriction Agreement: An agreement between the City and a BMR Unit Owner that is recorded against the BMR Unit and, among other restrictions, requires that the unit remain affordable to Low- or Moderate-Income households usually for a period of 55 years **or** as outlined in the Housing Agreement, restricts the resale price of the BMR Unit, requires the BMR Unit Owner to notify the City upon refinancing, reselling, or changing the title of a BMR Unit, and provides the City with an option to purchase or transfer the BMR Unit upon the occurrence of certain events.

1.1.3 Terms for Rental BMR Units

Administration Fees: Fees that are charged to each property with BMR Units to help cover the costs of monitoring and technical assistance provided by City Staff, as follows:

Annual Monitoring Fee: A fee charged by the City to the developer/property manager for the annual review of rental developments.

Fees may be adjusted from time to time by the City. All BMR rental developments will be notified of any change in fees.

Maximum Monthly Rent: The maximum allowable monthly rents for below market rate (BMR) rental units in Dublin. See **Section 5.4**.

Monitoring Findings: A letter indicating that a BMR rental development is out of compliance with recorded agreements. This may occur after annual monitoring is completed or when the City is informed of violations via tenant complaints or other means. This may result in action taken or fees charged by the City pursuant to the Affordable Housing Agreement to cure the findings. See **Section 5.5**.

Next Available Unit Rule: Rule that states when a BMR Unit is occupied by a tenant who no longer meets the BMR household or income eligibility requirements, the next available unit will be made available as a BMR Unit, and the current BMR Unit will convert to either market rate or some other subsidy status, as appropriate.

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Property Management Firm: Professional property managers that administer the day-to-day operations of a Residential Development project. May be an external contracted firm or staff associated with the developer or the property owner.

Utility Allowance: The amount maximum BMR rents must be reduced to account for utility costs. See **Section 5.4.1**.

2 Guidelines for All Residential Developers

2.1 Overview of Inclusionary Zoning Requirements

Residential Developments consisting of 20 residential units or more must comply with the Inclusionary Zoning Regulations Ordinance (Municipal Code Section 8.68.030.A). In general, the Ordinance requires that 12.5% of the units constructed in a Residential Development be reserved for occupancy by Low- and Moderate-Income households in for-sale units or by Very Low-, Low-, and Moderate-Income households in rental units. Such restricted units are defined as affordable units in Section 8.68.030.A, and are otherwise known as BMR Units. In addition to these Guidelines, developers should thoroughly review the Inclusionary Zoning Regulations Ordinance (Chapter 8.68 of the City's Municipal Code).

While the Ordinance requires that 12.5% of the units in the Residential Development be BMR Units, the Ordinance permits the developer to meet up to 40% of this obligation by paying an In-Lieu Fee (subject to approval by the City Council). Thus, there is a “must-build” requirement of 60% of the BMR Units in the Residential Development. BMR Units must remain affordable for a period of 55 years, enforced through affordability restrictions recorded against the property.

In addition, the Inclusionary Zoning Regulations Ordinance requires that BMR Units:

- Be constructed concurrently with the market-rate units in the Residential Development;
- Have a similar range of bedrooms to the market-rate units in the Residential Development;
- Not be distinguished by design or materials from the market-rate units in the Residential Development; and
- Be reasonably dispersed throughout the Residential Development.

A developer may also satisfy its Inclusionary Obligation by dedicating land, constructing BMR Units off-site, credit transfer, or alternative means if determined by the City Council to satisfy the purpose of the ordinance. See Section 8.68.040 of the Inclusionary Zoning Regulations for alternate methods of complying with the requirements of the Ordinance.

2.2 Inclusionary Zoning Process

Developers should address how to comply with the Inclusionary Obligation when submitting an application to the City for a Residential Development that includes 20 or more residential units. City Staff is available to discuss options for meeting the Inclusionary Obligation with developers. For example, if a developer intends to build only the minimum number of BMR Units and to pay an In-Lieu Fee for the remaining units, staff can, for planning purposes, inform the developer of the preliminary number of BMR Units the developer would be required to build, the income levels and sizes of the required BMR Units, and the amount of the In-Lieu Fee under the then-current fee schedule. The inclusionary zoning process is shown in **Figure 1**.

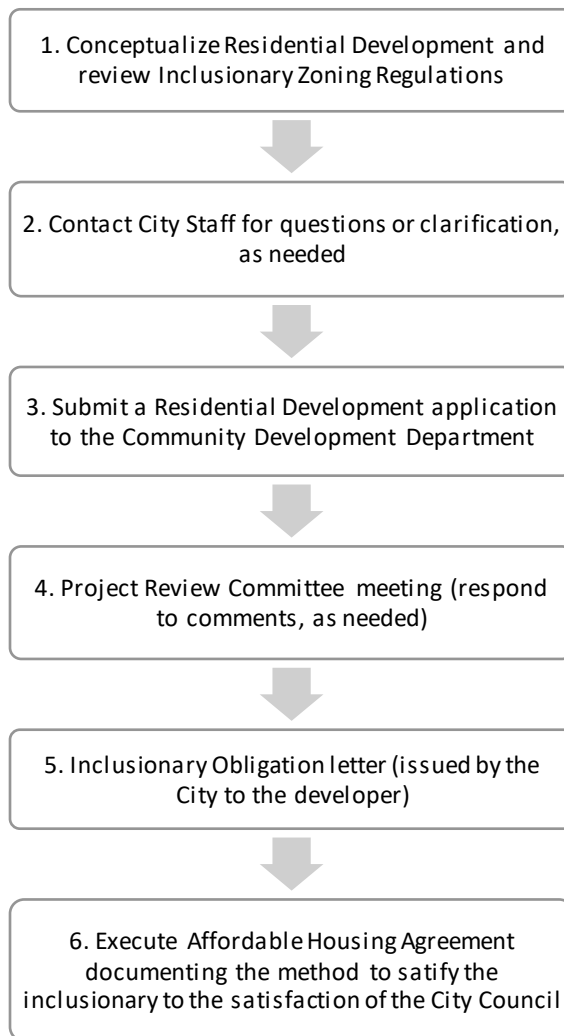
2. GUIDELINES FOR ALL RESIDENTIAL DEVELOPERS

After a Residential Development application is submitted to the Community Development Department for review, a Project Review Committee (PRC) meeting is generally held. In this meeting, City Staff and interested agencies involved in the development process review the Residential Development and give preliminary comments to the developer.

Prior to or following the PRC meeting, City Staff will send a letter to the developer indicating the developer's Inclusionary Obligation for the Residential Development as preliminarily proposed. A copy of this letter will also be directed to the City's Project Planner responsible for the Residential Development. The purpose of this letter is to provide the developer information on the Inclusionary Obligation as early as possible in the development process. The City recognizes that the Residential Development is likely to evolve over time and that the Residential Development will likely change prior to obtaining City entitlements. However, this information is provided early in the process as a service to the developer for planning purposes.

The developer's method of satisfying the Inclusionary Obligation will be formalized in an Affordable Housing Agreement or like agreement between the City and the developer, prior to the recordation of the first final map or the issuance of the first building permit, whichever occurs first, for the development.

Figure 1.
Inclusionary Zoning Process



2.3 Inclusionary Obligation

Developers of residential projects subject to Section 8.68.030.A of the Inclusionary Zoning Regulations Ordinance must meet an Inclusionary Obligation equivalent to 12.5% of the total number of proposed dwelling units, unless subject to an exception approved by the City Council. **Example 1** shows a sample calculation of the Inclusionary Obligation.

Example 1. Inclusionary Obligation Calculation

The developer proposes a 224-unit subdivision. The Inclusionary Obligation is 28 of the 224 total units proposed ($224 \text{ units} \times 12.5\% = 28 \text{ BMR Units}$).

2.4 Rounding

In making this calculation, any decimal fraction less than or equal to 0.50 is disregarded and a decimal fraction greater than 0.50 is construed as a unit. An example of the treatment of fractions in calculating the Inclusionary Obligation is shown in **Example 2**.

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Example 2. Treatment of Fractions in Calculating the Inclusionary Requirement

The developer proposes a 316-unit subdivision. The Inclusionary Obligation is 39 of the 316 total units proposed, after rounding the decimal fraction down ($316 \text{ units} \times 12.5\% = 39.5 \text{ BMR Units}$).

2.5 Portion of the Obligation That Must Be Constructed

The Ordinance requires that the developer provide 60% of the Inclusionary Obligation by constructing affordable units. The developer may opt to pay an In-Lieu Fee for up to 40% of its Inclusionary Obligation. Using the scenarios from **Example 1** and **Example 2**, **Example 3** illustrates the calculation of the number of BMR Units that must be constructed.

Example 3. Determining the “Must-Build” Obligation

Example 3.A The developer proposes a 224-unit subdivision, for which the Inclusionary Obligation is 28 of the 224 proposed units.

Must-Build (60%)

60% of 28 units = 16.8 units

The must-build obligation is 17 units.

In-Lieu Fee Option (40%)

40% of 28 units = 11.2 units

The developer may pay an In-Lieu Fee for up to 11 units.

Example 3.B The developer proposes a 316-unit subdivision, for which the Inclusionary Obligation is 39 of the 316 units.

Must-Build (60%)

60% of 39 units = 23.4 units

The must-build obligation is 23 units.

In-Lieu Fee Option (40%)

40% of 39 units = 15.6 units

The developer may pay an In-Lieu Fee for up to 16 units.

2.6 In-Lieu Fee Calculation

The amount of the In-Lieu Fee is set by Resolution of the City Council. Resolution No. 56-02 provides that the In-Lieu Fee per BMR Unit is adjusted annually on July 1 to reflect the greater of the percentage change either in (a) the Bay Area Urban Consumer Price Index as of February of each year, or (b) the HUD Fair Market Rent limits for the Oakland Primary Metropolitan Statistical Area that are in effect at the time. The fee as of July 1, 2017, is \$174,795 per BMR Unit required. Please contact the Housing Division for the most up-to-date in-lieu fee.

The entire In-Lieu Fee amount for the Residential Development is due and payable upon issuance of the first building permit for the Residential Development or at a time otherwise specified by the City Council.

Using the scenarios from **Examples 1, 2, and 3**, **Example 4** illustrates the calculation of the amount of the In-Lieu Fee as of July 1, 2017:

2. GUIDELINES FOR ALL RESIDENTIAL DEVELOPERS

Example 4. In-Lieu Fee Calculation

Example 4.A The developer proposes a 224-unit subdivision. In-Lieu Fees may be paid for 11 units.

$$11 \times \$174,795 = \$1,922,745$$

Example 4.B The developer proposes a 316-unit subdivision. In-Lieu Fees may be paid for 16 units.

$$16 \times \$174,795 = \$2,796,720$$

2.7 On-Site BMR Unit Requirements

2.7.1 BMR Units Requirements by Income Level

Pursuant to Section 8.68.030.B of the Inclusionary Zoning Regulations Ordinance, the BMR Units included in each Residential Development project must be allocated to Very Low-, Low-, and Moderate-Income households in the manner described in **Table 1**.

Table 1. Required BMR Units by Income Category

| Income Level | For-Sale Units | Rental Units |
|--------------|----------------|--------------|
| Moderate | 60% | 50% |
| Low | 40% | 20% |
| Very Low | — | 30% |

If the allocation calculations result in a decimal fraction, the rounding rules contained in Section 8.68.030.A and explained in **Section 2.4**, above, apply. In addition, if the allocation calculation results in fewer units than would otherwise be required, one additional unit should be allocated to the lowest income level with the decimal fraction closest to 0.50 (Section 8.68.030.B). **Example 5** illustrates the calculation of the number of BMR Units that must be provided at each income level and how the rounding requirement is implemented.

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Example 5. Rental Development BMR Unit Composition

A rental Residential Development includes 200 units. The Inclusionary Obligation is 25 BMR Units. The developer chooses to pay an In-Lieu Fee for 40% of the Inclusionary Obligation, which equals 10 units. The must-build requirement (60% of the BMR Units) is 15 BMR Units. The number of units per income category is calculated as follows:

Moderate-Income households: 50% of 15 = 7.5

Low-Income households: 20% of 15 = 3

Very Low-Income households: 30% of 15 = 4.5

Since two of these numbers are fractions at exactly 0.50, the additional required unit must be provided in the lower-income category. Thus, the unit income mix would be:

7 Moderate-Income units

3 Low-Income units

5 Very Low-Income units

2.7.2 BMR Unit Size Requirements

The Ordinance requires that the same proportion of bedrooms be reflected in the BMR Units as are in the market-rate units. The rounding conventions described in Municipal Code Section 8.68.030.A and explained in **Section 2.4** are used if the allocations result in decimal fractions. **Example 6** illustrates the determination of the number of BMR Units that must be provided at each unit size.

Example 6. BMR Unit Bedroom Requirements

A developer proposes a 200-unit rental Residential Development and is paying In-Lieu Fees for 40% of the BMR Units. The must-build obligation is 15 units. The overall Residential Development includes:

50 one-bedroom units (25% of total)

100 two-bedroom units (50% of total)

50 three-bedroom units (25% of total)

Therefore:

25% of the BMR Units are to be one-bedroom units

50% of the BMR Units are to be two-bedroom units

25% of the BMR Units are to be three-bedroom units

To determine bedroom requirement per income category:

If 5 of the units are Very Low-Income units, using the percentages above, the requirement for bedrooms are:

25% of 5 = 1.25 one-bedroom units

50% of 5 = 2.5 two-bedroom units

25% of 5 = 1.25 three-bedroom units

Therefore, the development would be required to provide:

1 one-bedroom unit

3 two-bedroom units

1 three-bedroom unit

The same calculation is performed to determine the number of bedrooms for the Low- and Moderate-Income units.

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2.7.3 Location of BMR Units within the Development

The Inclusionary Zoning Regulations Ordinance requires that BMR Units be reasonably dispersed throughout the Residential Development. The purpose of this requirement is to avoid concentration of the BMR Units in a particular location within a development, effectively segregating them from the rest of the Residential Development. There are many ways by which to implement this requirement, and consultation with Community Development Department staff is recommended prior to developing the final site plan.

2.8 Housing Agreements

Section 8.68.50 of the Inclusionary Zoning Regulations Ordinance requires the developer to execute one of the following Housing Agreements with the City:

- **Affordable Housing Agreement.** An agreement between the developer and the City for a Residential Development project that includes ownership BMR Units (and potentially BMR Secondary Units). Such agreements are recorded against the property on which the Residential Development is being constructed; set forth the developer's Inclusionary Obligation and the method by which the developer will comply with the requirements of the Inclusionary Zoning Regulations Ordinance; and require, among other things, that the developer require purchasers of BMR Units to execute a Resale Restriction Agreement and Option to Purchase with the City. The Affordable Housing Agreement is effective until all the In-Lieu Fees are paid, all the BMR Units are constructed and sold, and all the BMR Units are subject to a Resale Restriction Agreement.
- **Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants.** An agreement between the developer and the City for a Residential Development project that includes rental BMR Units. Such agreements are recorded against the property containing the BMR Units; set forth the developer's Inclusionary Obligation and the method by which the developer will comply with the requirements of the Inclusionary Zoning Regulations Ordinance; and require, among other things, that the BMR Units are reserved for occupancy by Very Low-, Low-, and/or Moderate-Income households at rents affordable to such households for a period of not less than 55 years.

The two Housing Agreements described above set forth the legal requirements for certain Residential Development projects for compliance with the Inclusionary Zoning Regulations Ordinance. The Housing Agreements are recorded against the property on which the Residential Development is being constructed, run with the land, and survive transfer or sale of the land. If a developer executes a Housing Agreement for a particular Residential Development project but the project is not built and new entitlements are sought for the applicable property, the developer must execute a new Housing Agreement, which would replace the existing agreement.

Among other things, the Housing Agreements must contain the following information:

1. A description of how the developer will comply with its Inclusionary Obligation (whether through unit construction and/or payment of an In-Lieu Fee).
2. Whether the BMR Units will be ownership or rental units.
3. The number of BMR Units the developer will construct for each income category.

2. GUIDELINES FOR ALL RESIDENTIAL DEVELOPERS

4. The size of the BMR Units the developer must construct for each income category.
5. Depending on the nature of the development, the timing of construction of the units to ensure that the BMR Units are constructed concurrently with the market-rate units.
6. If the development proposes ownership BMR Units, a requirement that the developer prepare and obtain City approval of a Marketing and Sales Plan, prior to issuance of any building permits in the Residential Development, indicating how the developer plans to sell the BMR Units. This requirement is discussed in additional detail in **Section 4.4.1**.
7. If the development proposes ownership BMR Units, there is a requirement that the developer require the purchasers of such units to execute a Resale Restriction Agreement or a Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants and a Performance Deed of Trust. A sample Resale Restriction Agreement is attached as **Exhibit 1**. A sample Performance Deed of Trust is attached as **Exhibit 2**. A sample Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants is attached as **Exhibit 6**.
8. If the development proposes rental BMR Units, the developer is required to provide a Marketing and Management Plan as described in **Section 5.2** to the City for its approval and prepare the Annual Report described in **Section 5.5.1**.

3 Household Requirements for BMR Renters and Owners

3.1 Overview

While the overall processes for BMR renters and owners differ, each program must conform to the same household composition and income requirements. These requirements are detailed in this section, and they apply to both programs.

3.2 Household Size and Income

The size of the household is determined by the number of people living in a household at the time of application. To qualify for a BMR Unit, the size of a household must be compatible with the size of the unit being rented or purchased. These standards are established to maximize occupancy of affordable units while avoiding overcrowding or unsafe conditions.

The household size for each BMR Unit may not be less than one person per bedroom. Consult with the City of Dublin for further clarification. **Table 2** contains the household size recommended for each BMR Unit based on the number of bedrooms.

Table 2. Recommended Household Size per BMR Unit

| Unit Size (Number of Bedrooms) | Household Size (Number of Persons) |
|--------------------------------|------------------------------------|
| 0 (studio) | 1–2 |
| 1 | 1–2 |
| 2 | 2–4 |
| 3 | 3–6 |
| 4 | 4–8 |

3.2.1 Maximum Total Household Income

To be eligible for a BMR Unit, the applicant's Total Household Income must not exceed the applicable Maximum Income. Total Household Income means the household's Gross Annual Household Income (see **Section 3.2.2**) plus assets calculated pursuant to **Section 3.3**. Maximum Income is determined annually by HCD based on Area Median Income. The income limits are updated once per year during the spring, and associated maximum rental rates are created using these income limits. **Table 3** shows the Maximum Incomes for Alameda County for 2018.

3. HOUSEHOLD REQUIREMENTS FOR BMR RENTERS AND OWNERS

Table 3. Income Limits per Income Category (Effective May 1, 2018)

| Income Category | % of Area Median Income* | Household Size (Number of Persons) | | | | | | | |
|---------------------|--------------------------|------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| Very Low | 50% | \$40,700 | \$46,500 | \$52,300 | \$58,100 | \$62,750 | \$67,400 | \$72,050 | \$76,700 |
| Low | 80% | \$62,750 | \$71,700 | \$80,650 | \$89,600 | \$96,800 | \$103,950 | \$111,150 | \$118,300 |
| Median ¹ | 100% | \$73,100 | \$83,500 | \$93,950 | \$104,400 | \$112,750 | \$121,100 | \$129,450 | \$137,800 |
| Moderate | 120% | \$87,700 | \$100,250 | \$112,750 | \$125,300 | \$135,300 | \$145,350 | \$155,350 | \$165,400 |

Source: HCD State Income Limits for 2018

* Percentages shown are general definitions; however, actual figures may not equate exactly to the percentage due to adjustments based on US Department of Housing and Urban Development and California Department of Housing and Community Development methodologies.

1. Median Income category is only to be used as a reference point for understanding Alameda County income limits, it does not represent an official income category for rental or ownership BMR Units.

3.2.2 Gross Household Income

Gross Household Income means all income from all adult household members (18 years of age and older) derived from all sources as established in the Internal Revenue Code (Title 26, Subtitle A, Chapter 1, Subchapter B, Part I, Section 61), whether or not such income is exempt from federal income tax. Such income includes, **but is not limited to**, the following:

- Compensation received from an employer
 - Compensation includes salary, overtime pay, bonuses, tips, and any other pay received, including cash, checks, or other forms of payment
 - Other pay can include compensation for special working conditions, such as hazard pay, or one-time payout of unused vacation and sick leave
- Alimony, spousal and child support
- Cash, including cash from the sale of personal property
- Pensions, if at an age where pension is being received as income
- Public benefits including, but not limited to, CalWORKS, Supplemental Security Income (SSI), and disability income
- All interest, dividends, and royalties
- Income derived from private businesses
- Rental income
- Compensation for services rendered, such as freelance, online businesses, side businesses, and self-employment, and including any payments, fees, fringe benefits, commissions, tips, and bonuses
- Stipend received for participation in a mentor, learning, or education opportunity
- Gains from dealings in private and/or commercial property
- Gambling winnings
- Annuities, life insurance, and endowment contracts

3. HOUSEHOLD REQUIREMENTS FOR BMR RENTERS AND OWNERS

- Income from discharge of indebtedness or debt forgiveness
- Gross partnership contributions or distributions
- Income from an interest in an estate or trust

Exceptions:

1. Gross Household Income does not include income earned by a household member who is between the ages of 18 and 26 and meets **both** of the following criteria:
 - a. Is claimed as a **dependent** of a household member on their federal income taxes; **and**
 - b. Is a **full-time student** (12+ units; school transcript must be provided).
2. Gross Household Income does not include payments to a household member from a governmental fund if **both** of the following requirements are satisfied:
 - a. The payments do not represent compensation for services rendered; and
 - b. The payments are part of a governmental need-based subsidy program including, but not limited to, housing choice vouchers or Section 8 federal housing assistance payments; CalFresh benefits; or Women, Infants, and Children (WIC) assistance.

For purposes of determining Gross Household Income, each person 18 years of age or older must present **all** of the following (and all documentation must be kept in tenant files for a period of not less than 3 years):

- A complete set of federal and state income tax returns for the past **2 years**. In the case where taxes have not been filed for either of the past 2 years, a letter of verification of non-filing from the Internal Revenue Service is required.
- Most current SSI statement of benefits, if applicable.
- Four most recent and consecutive pay stubs, if applicable.
- Three most recent and consecutive statements for all financial accounts, including, but not limited to, savings accounts, checking accounts, retirement accounts, 401(k) accounts, stock accounts, and other accounts held in the applicant(s) name(s), whether held individually or together.

If a household member is self-employed, in addition to the information above, that household member must submit profit and loss statements for the past 3 years (if applicable) and a current profit and loss statement for the year. The self-employed tenant must identify which banking accounts are used for business and personal. The City and/or the Property Manager reserves the right to request additional information needed to verify self-employment income.

3.2.3 Income Calculations

Income calculations align with the California Tax Credit Allocation Committee methodology and are summarized in this section. Income will be projected based on income documentation and will vary depending on pay frequency. For reference, **Table 4** shows different calculations for varying pay periods. The City and/or Property Manager will use all three income calculation methods and use the highest income projection of the three for qualification purposes.

3. HOUSEHOLD REQUIREMENTS FOR BMR RENTERS AND OWNERS

Table 4. Annual Income Calculations by Pay Frequency

| Pay Frequency | Annual Income Calculation |
|---------------|--|
| Monthly | Monthly income amount x 12 |
| Twice Monthly | Twice monthly income amount x 24 |
| Biweekly | Biweekly income amount x 26 |
| Weekly | Weekly income amount x 52 |
| Hourly | Hourly income x 40 (or whatever normal hours per week may be) x 52 |

3.2.4 Income Calculation Methods

All forms of income will be included in the income calculation. Sections 3.4.1.1 through 3.4.1.5 outline different calculations and documentation requirements for each form.

3.2.4.1 Regular Income

During the qualification process, income shall be calculated three ways. Upon conducting these calculations, the highest income calculation will be used to determine eligibility. The three calculations will allow consideration of a variety of income situations, including variable hourly income, regular overtime pay, or temporary income changes in income. The following three ways will be used:

- 1. Verification of Employment from Employer.** A letter from the applicant's employer stating the position, terms of employment, full-time or part-time status, salary/hourly rate, and overtime rate. This letter must indicate whether the employee will regularly receive overtime.
- 2. Year-to-Date (YTD) Calculation.** This calculation will use the hourly, monthly, or annual pay based on the verification and pay stubs. **Examples 7 and 8** show how income may be calculated.
- 3. Average Number of Hours and Overtime as Listed on Pay Stubs.** This calculation uses the four most recent and consecutive pay stubs as described in **Section 3.2.2** above in order to calculate the average pay. **Example 9** shows how income this may be calculated.

3. HOUSEHOLD REQUIREMENTS FOR BMR RENTERS AND OWNERS

Examples 7 and 8. Year-to-Date Income Calculation

Example 7. The applicant's pay stub indicates the following:

- \$1,500 income (gross)
- Full-time (40 hours per week)
- Biweekly pay (26 pay periods per year)
- No regular overtime

YTD Calculation:

$\$1,500 \times 26 \text{ pay periods per year} = \mathbf{\$39,000 \text{ annual salary}}$

Example 8. The applicant's pay stub indicates the following:

- \$25 per hour
- Full-time (40 hours per week) plus overtime
- Twice monthly pay (24 pay periods per year)
- \$150 in overtime each pay period

YTD Calculation:

$\$25 \times 40 \text{ hours per week} = \$1,000 \text{ per week}$

$\$1,000 \times 4 \text{ weeks} = \$4,000 \text{ per month}$

$\$4,000 \text{ per month} \times 12 \text{ months} = \$48,000$

$\$150 \text{ per pay period overtime} \times 2 \text{ pay periods per month} = \$300 \text{ in overtime per month}$

$\$300 \text{ monthly overtime} \times 12 \text{ months} = \$3,600 \text{ estimated overtime per year}$

$\mathbf{\$48,000 \text{ full-time salary} + \$3,600 \text{ overtime} = \$51,600 \text{ total salary}}$

3. HOUSEHOLD REQUIREMENTS FOR BMR RENTERS AND OWNERS

| Example 9. Average Number of Hours and Overtime Calculation | | | |
|--|---|---|---------------------------------|
| Applicant is paid once weekly at an hourly rate of \$20 and an overtime rate of \$30. | | | |
| Pay stub 1: 40 regular hours 5 overtime hours | Pay stub 2: 30 regular hours 0 overtime hours | Pay stub 3: 40 regular hours 3 overtime hours | Pay stub 4: 40 regular hours |
| 7 overtime hours | | | |
| <u>Calculation for regular hours:</u> $40 + 30 + 40 + 40 / 4 = \text{average } 37.5 \text{ regular hours}$ | | | |
| <u>Calculation for overtime:</u> $5 + 0 + 3 + 7 / 4 = \text{average } 3.75 \text{ overtime hours}$ | | | |
| <u>Calculation for total income*:</u> \$20 regular rate x 37.5 regular hours = \$750.00 \$30 overtime rate x 3.75 overtime hours = \$112.50 \$750.00 + \$112.50 = \$862.50 weekly pay x 52 weeks = \$44,850.00 | | | |
| *Adjustments will need to be made to this calculation depending on the frequency of pay based on the calculations in Table 4 , above. | | | |

3.2.4.2 Income from Self-Employed or Non-Corporation Wages

A self-employed applicant is also considered to have variable income. Gross annual income calculations will be based on the current year's income projections or expectations. In order to reach these projections, the previous 2 years' net income shown on Schedule C of the federal income tax returns, plus net income before taxes from the applicant's signed, year-to-date Profit and Loss Statement, will be reviewed.

3.2.4.3 Income from Social Security and Supplemental Security Income

Third-party income verifications received directly from the source of income are a valid means of verifying gross income. The current year's Social Security Award letter for regular Social Security and the most current verification letter for Supplemental Security Income constitute a third-party income verification.

3.2.4.4 Income from Pensions, Annuity Payments, Etc.

Pension and annuity payment (and other similar income) shall also be verified through third-party documentation or a statement/letter that verifies the total amount from this income source.

3.2.4.5 Income from Gifts

Income from gifts must include a signed and dated statement from the person providing the gift indicating the amount and frequency of the gift. For occupants of BMR rental units, an updated statement must be collected during recertification each year and be kept in the applicant's file. All gifts that are not used for the down payment will be counted as assets and incorporated into the income calculation.

3. HOUSEHOLD REQUIREMENTS FOR BMR RENTERS AND OWNERS

3.3 Assets

An asset test will be applied to all applicants to determine whether they satisfy the income requirements. Tax Credit rental communities may have different asset requirements for renters. If an applicant has assets that exceed \$30,000, the following amounts will be added to the applicant's Gross Household Income to determine the household's Total Household Income:

- 10% of all assets valued at between \$30,001 and \$130,000
- 30% of all assets valued over \$130,000

The maximum assets allowed are \$250,000. Households with assets in excess of \$250,000 will be disqualified. Assets include, but are not limited to, cash, all savings and checking accounts, stocks, bonds, real estate, gifts, and other sources of money. See **Section 4.3** for greater detail on gift, asset, and cash requirements for the homeownership program.

Funds that are excluded from the asset test include:

- Pensions and federally approved retirement savings accounts, such as IRAs, Roth IRAs, and 401(k)s; however, retired applicants who receive income from their retirement account must include such income as Gross Household Income on their application;
- Funds that are in 529 education savings accounts; and
- Funds that will be used toward the down payment on the unit/home, with a maximum of up to 20% of the purchase price.

Example 10 illustrates the calculation for determining income with assets.

Example 10. Determining Income with Assets

Example 10.A A household of three earns \$50,000 a year and has \$150,000 in total household assets

$\$150,000 - \$30,000 = \$120,000$ (which is less than \$130,000)

10% of \$120,000 = **\$12,000**

New total household income: $\$50,000 + \$12,000 = \$62,000$

Example 10.B A household of three earns \$50,000 a year and has \$200,000 in total household assets

$\$200,000 - \$30,000 = \$170,000$ (which is more than \$130,000)

10% of \$130,000 = **\$13,000**

30% of balance of \$40,000 = **\$12,000**

New total household income: $\$50,000 + \$13,000 + \$12,000 = \$75,000$

3.3.1 Asset Exceptions

In certain circumstances, households with a senior or disabled household member may be allowed an exception to the asset requirements described in this section. The City may require that applicants submit a written request explaining the need for an exemption pursuant to the Exceptions procedures described in **Section 7.2** of these Guidelines.

3.4 Preference Points

Applicants for BMR Units will be screened by the developer or its designated party for initial eligibility based on the requirements set forth in **Section 3**, which includes household qualification

3. HOUSEHOLD REQUIREMENTS FOR BMR RENTERS AND OWNERS

information for both ownership and rental BMR Units. If there are more qualified applicants than units available, Qualified Households will be ranked based on the number of Preference Points they receive. The City and the developer will apply the Preference Point system in the initial sale of ownership BMR Units and leasing of rental BMR Units, as applicable. *The Preference Points system is not applied in the subsequent resale of ownership BMR Units.*

The Preference Point system set out in the Inclusionary Zoning Regulations Ordinance provides priority to certain households who are deemed to have a priority need for housing in Dublin. Priority groups are shown in **Table 5**. Each household may only claim Preference Points once for any given category. The Ordinance provides that even if two persons in the household qualify for Preference Points for the same category, the points are only awarded for one person. For example, if a husband and wife are both employed in Dublin, the couple receives only 3 Preference Points for being employed in Dublin. Similarly, if two seniors make up a household, they would be entitled to only 1 Preference Point.

Some developments may seek to serve the specific housing needs of one or more segments of the population, such as seniors, disabled persons, or veterans. Some such developments may utilize a preference system that varies from the system described in the Inclusionary Zoning Regulations Ordinance and described herein to prioritize these target households. Alternative preference systems must be approved by the City Manager and described in detail in the approved Marketing and Sales Plan for ownership BMR Units or in the Marketing and Management Plan for rental BMR Units (see **Section 4.4.1** for detail regarding the Marketing and Sales Plan, and **Section 5.2** for detail regarding the Marketing and Management Plan).

3. HOUSEHOLD REQUIREMENTS FOR BMR RENTERS AND OWNERS

Table 5. Preference Points

| Priority | Points | Proof Required |
|--|--------|--|
| Employed in Dublin for at least 6 months | 3 | Copy of first and most recent pay stub establishing length of employment; or Letter from employer, on company letterhead, indicating continuous employment for the past 6 months; or If self-employed in Dublin, then the business must have a current City business license for at least 6 months at the time of application. |
| Public service employee in Dublin* | 1 | Copy of first and most recent pay stub establishing length of employment; or Letter from employer, on company letterhead, indicating continuous employment for the past 6 months; or For a newly hired teacher at a State-accredited school, who will be working in Dublin, a copy of employment contract; and A letter from employer confirming employment and employer contact information. |
| Has resided in Dublin for at least 1 year | 3 | Copy of two utility bills (PG&E or water), one from at least 1 year ago and one most recent utility bill, both showing the applicant with a Dublin address; or Copy of a current rental agreement. |
| Seniors (62 and over) | 1 | A valid state driver license; or A valid state identification card (with photo); or A valid passport. |
| Permanently disabled | 1 | Doctor's note confirming that applicant is permanently disabled; or Other verification from a state agency establishing permanent disability status; or Verification of receipt of SSI or SSDI. |
| Veteran | 1 | A military department record of service such as an original military service record or certified copy. The document must contain the length, time, and character of the service. |
| Has an immediate family member who is a Dublin resident and who has continuously lived in Dublin for at least 1 year** | 1 | Copy of two utility bills (PG&E or water), one from at least 1 year ago and one most recent utility bill, both showing the immediate family member with a Dublin address; or Copy of the immediate family member's current rental agreement; and Copy of birth certificates for self and immediate family member, establishing relationship; or Other legal document establishing relationship. |
| Must move because housing is to be demolished or converted to condo | 1 | Letter from apartment owner or management firm verifying the imminent condominium conversion or demolition of the unit; and Confirmation from the City's Community Development Department. |

* A public service employee is a person who is employed by a public agency such as the City of Dublin, a firefighter or police officer assigned to work in Dublin, BART, DSRSD, or USPS working in Dublin.

** Immediate family is defined as a mother, father, brother, sister, child, grandparent, or grandchild currently living together for 6 months or more.

3. HOUSEHOLD REQUIREMENTS FOR BMR RENTERS AND OWNERS

Example 11 demonstrates how Preference Points are calculated.

Example 11. Preference Points Calculation

Example 11.A An applicant for a BMR Unit both lives in Dublin (for at least 1 year) and works in Dublin (for at least 6 months). This individual will receive the following points:

| | |
|------------------------|-----------------|
| Lives in Dublin | 3 points |
| Works in Dublin | <u>3 points</u> |
| Total number of points | = 6 points |

Example 11.B One member of an applicant household works in Dublin and is a schoolteacher. This household will receive the following points:

| | |
|-------------------------|----------------|
| Works in Dublin | 3 points |
| Public service employee | <u>1 point</u> |
| Total number of points | = 4 points |

4 Procedures for Ownership BMR Units

4.1 Overview

The ownership program includes additional procedures for the marketing, sale, annual monitoring, refinancing, and resale of Ownership BMR Units. This section includes information on each part of the BMR Ownership Program.

4.2 Requirements for Purchasing Ownership BMR Units

This section applies to all BMR Units, including resales and new BMR Units.

4.2.1 Maximum Sale Price of BMR Units

BMR Units are priced to be affordable to households that are at or below certain designated income levels. The sale price of comparable market rate units or even comparable BMR Units has no bearing on the resale price of a particular BMR Unit. The maximum sales price for a BMR is based on several factors, including:

1. The applicable State of California Income Limits for Alameda County in effect at the time the unit is put on the market,
2. The number of bedrooms, and
3. The estimated total monthly housing payment, which includes the costs of the mortgage payment (principal and interest), HOA dues, property taxes, utilities, homeowner's insurance and private mortgage insurance (if applicable).

Pursuant to Section 8.68.020A.2 of the Inclusionary Zoning Regulations Ordinance, owner-occupied units are deemed affordable units if the sales price results in annual housing expenses that do not exceed 35% of the maximum income level for Low- and Moderate-Income households, adjusted for household size. The price is then rounded to the nearest \$100. The maximum sale price for for-sale BMR Units is based on a designated income percentage that is intended to be affordable to a greater range of households in each applicable income category.

- For Low-Income households (household income of between 51% and 80% of Area Median Income), the maximum sales price is determined based on a total monthly housing payment equivalent to one-twelfth of 35% of 70% of the AMI for Alameda County.
- For Moderate-Income households (household income of between 81% and 120% of Area Median Income), the maximum sales price is determined based on a total monthly housing payment equivalent to one-twelfth of 35% of 110% of the AMI (per HCD Regulations).

In addition, the maximum sales price is based on the number of bedrooms in the BMR Unit instead of the number of persons in the particular household. For example, if a developer is selling a two-bedroom unit, the sales price would be calculated under a "number of bedrooms, plus one" rule for

4. PROCEDURES FOR OWNERSHIP BMR UNITS

the assumed household size.¹ The assumed household size is based on the size of the residential unit, as shown in **Table 6**.

Table 6. Household Size Assumption for Maximum Sales Price Calculations

| Unit Size (Number of Bedrooms) | Assumed Household Size (Number of Persons) |
|--------------------------------|--|
| 1 | 2 |
| 2 | 3 |
| 3 | 4 |
| 4 | 5 |

The City uses the following assumptions to calculate the maximum sales price that developers must use in the initial sale of BMR Units. Note, however, that a Qualified Household's actual Housing Expenses may differ from these assumptions.

- *Interest* – 15-year average of the 30-year fixed rate mortgage (FRM) rate for the West Region.
- *Mortgage Term* – fixed rate for 30 years.
- *Buyer's Down Payment* – the calculation uses 5% which is typical. The minimum required for the City of Dublin is 3%.
- *Taxes* – 1.25% of the estimated sale price of the unit.
- *HOA Dues (if any)* – For new units, the City will require the developer to provide an estimate of the HOA dues by unit size. For resales, the actual, current amount of the HOA dues will be used.
- *Insurance* – homeowner's insurance. The cost of homeowner's insurance may be calculated based on an estimate provided by the developer. (If the homeowner's insurance is covered by an HOA structure, homeowner's insurance need not be included, but it must be documented that the HOA will provide adequate insurance.)
- *PMI* – private mortgage insurance. Because most BMR Unit buyers will not have total down payment proceeds of 20%, and instead will have a minimum required down payment of 3%, they will be subject to private mortgage insurance, which is estimated at .74% of the sale price of the unit. (.74% is a mid-range estimate based on average PMI costs.)
- *Utilities* – Costs include heating, cooking, other electrical and water heating. Depending on whether or not an HOA already covers water and trash collection, these costs may need to be included.
- *Other* – may include special assessments or fees for special assessment districts.

Example 12 shows how the sale price is calculated. The example is broken into three processes.

First: The first amount to be determined is how much of their monthly income a household at the designated income level can allocate to their total monthly housing expenses, for those expenses to be considered affordable. These monthly housing expenses include the costs of

¹ These assumptions are for the purpose of determining sales price only and are not enforceable occupancy limits or restrictions, and shall not be included as limiting or eligibility criteria in the marketing or sales of BMR Units.

4. PROCEDURES FOR OWNERSHIP BMR UNITS

the mortgage payment (principal and interest), HOA dues, property taxes, utilities, homeowner's insurance and private mortgage insurance (if applicable).

Second: The formula tallies all the housing expenses except the amount of the mortgage payment. Then the formula takes the amount the household can affordably spend on their housing expenses (#1 above) and subtracts all the other estimated housing expenses. The result is the maximum amount that the monthly mortgage payment must be, to be considered affordable to a household at the designated income level.

Third: To translate the maximum monthly mortgage payment amount into the maximum sale price, the calculation uses a Present Value formula, which is a financial formula that calculates the present value of a loan based on a constant interest rate and a set monthly payment.

4. PROCEDURES FOR OWNERSHIP BMR UNITS

| | |
|--|------------------|
| Example 12. BMR Unit Sales Price Calculation <i>(three-bedroom home for a four-person Moderate-Income household)</i> | |
| Fixed APR interest (based on 15 yr. average of interest rates, adjusted annually) | 4.5% |
| Monthly interest rate (annual rate / 12 months) | .38% |
| Mortgage term 30 year (total term * 12 months) | 360 |
| Typical Down Payment (minimum required is 3%, example uses 5%) | 5% |
| Income upper limit for qualification purposes (120% of AMI) | \$116,900 |
| Expected income for households in the median to moderate range (110% of AMI) | \$107,140 |
| Annual Amount of income available for housing expenses (35% of 110% of AMI) | \$37,499 |
| Monthly amount of income available for housing expenses (annual amount / 12 months) | \$3,125 |
| MONTHLY HOUSING EXPENSES | |
| Property Taxes (estimated at 1.25% of sales price)* | \$497 |
| HOA Dues (estimated monthly cost) | \$275 |
| Insurance (estimated monthly cost) | \$50 |
| Mortgage Insurance (estimated at .74% of mortgage / 12 for monthly cost)** | \$233 |
| Utilities (estimated monthly cost) | \$158 |
| SUBTOTAL HOUSING EXPENSES (does not include mortgage) | \$1,213 |
| Monthly mortgage amount (monthly amount of income available for housing expenses MINUS subtotal from line above) | \$1,912 |
| MAXIMUM AFFORDABLE SALE PRICE CALCULATION | |
| Monthly mortgage amount | \$1,912 |
| Maximum Affordable Sales Price (Present Value of Monthly Mortgage payment at set interest rate for duration of 30 yr. mortgage)*** | \$397,320 |
| Buyer's down payment amount (5%) | \$19,866 |
| Mortgage principal | \$377,454 |
| <p>*Sales Price calculator uses set formulas to calculate property taxes so that it is correct after all other variables have been entered.</p> <p>**Mortgage insurance is required for mortgages financing more than 80% of the total sales price. Actual rates are variable dependent on the borrower's credit risk, the percentage of the sales price being financed, and location of the unit.</p> <p>***Present Value is a financial formula that calculates the present value of a loan based on a constant interest rate and a set monthly payment.</p> | |

4. PROCEDURES FOR OWNERSHIP BMR UNITS

4.3 Application and Screening Process

All applicants must complete the application that has been approved by the City as part of the Marketing and Sale Plan (outlined in **Section 4.4.1**) and to provide the required supporting documentation by the deadline set forth in the plan. The developer should plan accordingly to ensure that applicants are not qualified more than 6 months before the move-in date for the unit.

Complete application packets should include at a minimum:

1. Complete application document;
2. Income and asset documentation set forth in **Sections 3.2.3-4** and **3.3**;
3. Reservation instrument showing the address, number of bedrooms, and sales price (if an initial sale);
4. A loan preapproval letter and Loan Estimate;
5. A signed Disclosure Statement (Exhibit F of the Resale Restriction Agreement);
6. A signed credit report authorization and release or other consent and verification letter;
7. Copy of recent tri-merge credit report; and
8. Evidence of a minimum of 3% available funds to be used as a down payment.

4.3.1 Requirements for BMR Unit Applications

A household is qualified to participate in the BMR Ownership program if it satisfies the requirements stated in **Table 7**.

4. PROCEDURES FOR OWNERSHIP BMR UNITS

Table 7. BMR Ownership Household Qualifications

| Qualification Requirement | Description |
|---------------------------|---|
| Income | The household's Total Household Income must not exceed the applicable Maximum Income set forth in Section 3.2.1 . |
| First-Time Homebuyer | No member of the household may have owned any interest in real property during the three-year period prior to the household's BMR Unit application date, as defined by HUD. |
| Owner Occupancy | The household will occupy the unit as its Principal Residence within 30 days of the close of escrow on the unit. The owner must reside in the unit; no rental of the unit in any kind is permitted unless authorized by the City's Housing Division. |
| Size | The household is of a size meeting the household size criteria set forth in Section 3.2 . |
| Homebuyer Education | All title holders of the property must take a HUD-approved or City-approved 8-hour homebuyer education workshop prior to the anticipated close of escrow date and receive a certificate of completion. The certificate of completion must be dated within 6 months of the date of application. |
| Credit Score | All applicants have a minimum FICO credit score of 620 (see Section 4.3.2). |
| Residency/Citizenship | All household members must be either a citizen or national of the United States or a qualified alien defined by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). H-1B Visa holders are considered temporary residents under PRWORA. Citizenship is based on status at time of application submittal. |
| Loan Preapproval | Homebuyers must be prequalified for a home loan that conforms to the requirements established in Section 4.3.5 . |
| Debt to Income Ratio | Homebuyers' proposed debt (based on current liabilities and proposed housing payment) may not exceed 45% of the household's monthly income. |

Qualification determinations may be appealed in accordance with the procedures described in **Section 7**.

Qualified Households are subject to specific requirements and restrictions regarding BMR Unit financing and title and loan structure.

4.3.2 Credit Score

For ownership BMR Units, a credit check will be conducted on all adults (other than dependents) in the household. Applicants must have sufficient creditworthiness to qualify. Creditworthiness means that:

1. All household individuals shall have a minimum of 3 years since Chapter 7 or Chapter 13 bankruptcy discharge date and/or foreclosure/short sale and evidence of reestablished credit is provided; and
2. All persons appearing on the mortgage shall have a minimum FICO credit rating of 620 points from all three credit agencies.

4. PROCEDURES FOR OWNERSHIP BMR UNITS

Alternative Credit History is permitted with satisfactory references from a minimum of four trade lines and 12 months of consistent payment records. One of the trade lines must be a 12-month verification of rent history.

4.3.3 In-Person Consultation

All members of the BMR Unit buyer household must attend an in-person meeting with City Staff to discuss BMR Unit resale restrictions and ongoing requirements prior to close of escrow. Following issuance of a qualification letter, City Staff will work with the buyers to determine a mutually convenient meeting time. At the meeting, the buyers will review and sign a disclosure statement agreeing to the terms and conditions of the program.

4.3.4 Homebuyer Education Program

Every person on the property title must successfully complete a City-approved Below Market Rate 8-hour homebuyer education class prior to the close of escrow and must provide the City with evidence of completion.

4.3.5 Title and Loan Requirements

No cosigners are permitted on any BMR loan products. All adult household members must appear as an owner or co-owner on the BMR Unit title and must cosign for any purchase loan for the BMR Unit with the following exceptions:

1. Legal dependents of titleholders as claimed on the most recent tax return or legal minor children of titleholders. Spouses or domestic partners are not considered dependents.
2. Recent immigrants with insufficient credit history, defined as persons who have been in the United States for 2 years or less, as supported by entrance documentation or a sworn statement and lender documentation of the reason for loan denial, including a copy of the applicant's credit report.

4.3.6 Financing Requirements

All BMR Unit buyers must be able to secure a loan through a lending institution for a BMR Unit. For new BMR Units, the developer may require that all applicants get prequalified from the developer's preferred lender at the time of application. However, once an applicant receives approval to purchase a unit, applicants may use a lender of their choice, provided that the lender adheres to the City's Guidelines for acceptable loan products. The City does not have a preferred lender list at this time but can provide lenders who are familiar with BMR loan products.

4.3.6.1 Acceptable Loan Products to Purchase or Refinance a BMR Unit

The City reserves the right to reject loan products if the City believes in its sole discretion that there is a stronger likelihood that the loan product would potentially result in loss of the BMR Unit due to the purchasers' inability to comply with the terms of the loan.

Following is a nonexclusive list of the loan products that may be acceptable to the City. The list is not intended to be exhaustive, and other loan products may be evaluated upon request.

Acceptable First Mortgage Loan Products

- Fixed mortgages up to 40 years

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- Maximum 100% combined loan to value

Prohibited Loan Products and Unacceptable Mortgage Features

- Interest-only loans
- Negative amortizing loans
- Adjustable rate loans
- Balloon payment loans
- Lines of credit that exceed the resale price of the unit
- Stated income loans
- Excessive points and fees (more than what is typical of the market at the time)

All-Cash Sales

All-cash sales are not permitted.

Down Payment Requirements

The buyer is required to make a minimum down payment of at least 3% of the sales price, with a maximum down payment of 20% of the sales price. No exceptions will be made to the requirement. Funds must meet the following criteria:

- Funds must come from acceptable, verifiable sources that are properly documented per Federal Housing Administration Guidelines;
- Funds must be deposited with the applicant's financial institution account for a minimum of 3 months from date of application;
- Funds must be placed into escrow prior to the close of escrow;
- Funds used for the 3% down payment may not be used toward closing costs. The applicant is still responsible for paying any applicable closing costs.

Gift Funds

One-time gift funds may be used towards the down payment, or closing costs, given that the buyer still supplies a minimum of 3% towards the down payment from their personal funds. The down payment—including gift funds and buyer's 3% down payment funds—cannot exceed 20% of the total purchase price. Reoccurring gifts or larger gifts will be considered as assets and included in the income calculation. All gifts must be clearly identified in a "gift letter" which must be submitted with the application.

Debt to Income Ratio

Homebuyers' proposed debt (based on current liabilities and proposed housing payment) may not exceed 45% of the household's monthly income. Mortgage lenders may set lower debt to income ratio limits, and the average limit for lenders in the Dublin area is 43%.

4. PROCEDURES FOR OWNERSHIP BMR UNITS

First Mortgage Loan to Value Ratio

Borrower must provide funds in an amount equal to a minimum of 3% of the purchase price for use as a down payment. **The 3% must be applied to the purchase price so the combined loan to value ratio does not exceed 100%.** This applies for all VA or FHA loans as well.

Closing Costs and Deposits

The buyer is responsible for all closing costs related to the mortgage for the purchase of the BMR Unit, including, but not limited to, title fees, escrow fees, and loan origination fees (approximately 2% to 3% of the purchase price). The buyer may be “gifted” funds to pay for these closing costs, as discussed above.

The buyer may take advantage of other down payment assistance programs to assist with closing costs with approval from the City.

Down Payment Assistance

The City reserves the right to reject down payment assistance products if the City believes in its sole discretion that there is a stronger likelihood that the down payment assistance product would potentially result in loss of the BMR Unit due to the purchasers' inability to comply with the terms of the assistance. For information about the City's Down Payment Assistance Program, please contact the Housing Division at (925) 833-6610 or Housinginfo@dublin.ca.gov.

4.3.6.2 Recorded Documents (Resale Restriction Agreement and Performance Deed of Trust)

The Inclusionary Zoning Regulations Ordinance requires that all BMR Units be deed restricted to income eligible households for a period of 55 years. As a result, BMR Unit buyers must execute a Resale Restriction Agreement and a Performance Deed of Trust. These documents must be signed by all title holders and recorded.

Highlights of the Resale Restriction Agreement

The following sections highlight some of the restrictions in the Resale Restriction Agreement. This list is not intended to be exhaustive. A sample Resale Restriction Agreement is provided in **Exhibit 1**.

Principal Residence Requirement. The BMR Unit must be owner-occupied and may not be used as an investment or rental property. BMR Unit Owners are required to occupy the BMR Unit as their Principal Residence. The City monitors this requirement on an annual basis (see Annual Survey/Owner-Occupancy Monitoring below). BMR Unit Owners are further prohibited from renting **any** part of their unit without prior written approval from the City. Refer to **Section 4.6** for a discussion of circumstances in which a BMR Unit Owner may be approved to rent out a BMR Unit and related provisions. Failure to adhere to these requirements could constitute an Event of Default under the Resale Restriction Agreement. Failure to occupy the BMR as a primary residence will result in a Notice of Default with the City of Dublin being owed all rents, profits, revenues or income received on the property plus any applicable penalty fees.

Resale of BMR Unit. The City of Dublin is not responsible for locating or providing qualified buyers for BMR Units; however, all potential buyers must be qualified by the City before the sale can proceed. BMR Unit Owners may only sell their units to a Qualified Household or to the City for a restricted price calculated pursuant to **Section 4.2**. A BMR Unit Owner must follow the requirements set forth

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in **Section 4.7** when selling his or her unit. The City has the right of first refusal on all BMR homes in the City of Dublin.

Appreciation Share. Upon the first sale of the BMR Unit after the end of the 55-year term of the Resale Restriction Agreement, the owner must pay to the City an amount equal to 25% of the difference between the actual sales price and the adjusted resale price calculated pursuant to the formula set forth in **Section 4.7.1**. For example, if a BMR Unit was originally purchased for \$200,000 (actual sale price) and at the end of 55 years sells for \$500,000 (adjusted resale price), the equity in the unit is \$300,000. The amount owed to the City would be 25% of the \$300,000, or \$75,000.

Title Changes. A BMR Unit Owner cannot make changes to the title on a BMR Unit without prior written approval from the City. BMR Unit Owners must request changes to title in writing before making **any** changes to the title to a BMR Unit and are responsible for all costs associated with adding or removing a person to or from the title. In the case of a change in the household makeup, due to either marriage, divorce, legal separation, death, or other occasion that will cause a person to move in or to vacate the BMR Unit, BMR Unit Owners should contact the City to ascertain how to add or remove names from the Resale Restriction Agreement and Performance Deed of Trust.

City's Option to Purchase. The City has the option to purchase a BMR Owner's unit upon the occurrence of certain events, including, but not limited to, the City's receipt of a Notice of Intent to Transfer from the BMR Unit Owner, bankruptcy of the BMR Unit Owner, City issued Notice of Default, or foreclosure. The City may also choose to transfer its purchase option to an individual or organization of its choosing. A BMR Unit Owner must notify the City when it desires to sell its BMR Unit by submitting a Notice of Intent to Transfer (see Exhibit B to the Resale Restriction Agreement) to the City. If the City decides not to purchase the unit, the City will send the BMR Unit Owner a Conditional Consent to Transfer letter, along with a packet of information that will assist the BMR Unit Owner in finding a Qualified Household to purchase the unit.

Refinancing BMR Units and Taking Cash Out. In general, BMR Unit Owners may refinance their units only to take advantage of a new loan that benefits the BMR Unit Owner financially (e.g., a lower interest rate with lower monthly payments). BMR Unit Owners must contact the City in writing for prior written approval of **all** refinancing. Taking cash out of the unit is not allowed unless the cash will be used for Approved Capital Improvements as outlined in **Section 4.6.5**.

Maintenance Requirements. The BMR Unit Owner is required to maintain the property in good, safe, and habitable condition and in compliance with all applicable laws, ordinance, regulations, and other codes. The Resale Restriction Agreement entitles the City to inspect the BMR Unit upon receiving a Notice of Intent to Transfer to determine whether there are any adjustments to be made to the City's calculation of the resale price.

Annual Survey/Owner-Occupancy Monitoring. Each year, the City of Dublin will verify compliance with the Principal Residence requirement. An annual monitoring survey will be emailed to the owner(s) of each BMR Unit, usually around the anniversary date of the purchase of the unit. Each owner **must** complete and return the survey along with qualifying documentation within the prescribed time frames in the notice. *Failure to return the survey and documentation could place the BMR Unit Owner(s) in default of the Resale Restriction Agreement.* In addition, pursuant to the Consent Agreement, the City may access and review the BMR Unit Owner's credit reports or other financial or personal information to verify the BMR Unit Owner's compliance with the Resale Restriction Agreement and these Guidelines.

4. PROCEDURES FOR OWNERSHIP BMR UNITS

Estate Planning. Upon the death of a BMR Unit Owner, the inheriting owner must notify the City of the BMR Unit Owner's death within 30 days of the date of the death and must sell the BMR Unit to a Qualified Household at a restricted resale price within 180 days (or longer if approved by the City due to market conditions) **unless all of the following apply:** (i) the inheriting owner is the legal child or stepchild of the BMR Unit Owner; (ii) the City verifies that legal child or stepchild qualifies as a Qualified Household; and (iii) the legal child or stepchild signs a Resale Restriction Agreement and a Performance Deed of Trust.

4.4 Procedures for Initial Sale of BMR Units

This section applies to developers of new ownership BMR Units.

4.4.1 The Marketing and Sales Plan for Initial Sale of Ownership BMR Units

Prior to the issuance of building permits for any ownership BMR Units, the developer must submit a Marketing and Sales Plan to the City for approval. The Marketing and Sales Plan must contain the components described in **Table 8**. A sample Marketing and Sales Plan is attached as **Exhibit 3**.

4. PROCEDURES FOR OWNERSHIP BMR UNITS

Table 8. Required Marketing and Sales Plan Contents

| Component | Description |
|---------------------------------|--|
| Narrative Summary | A 1-page narrative summary suitable for advertising the availability of the BMR Units on the City web page and other locations. The summary must include: <ul style="list-style-type: none">• A description of the total number of BMR Units and market-rate units in the Residential Development;• The HOA dues for each BMR Unit;• The amenities included in the unit; and• Contact information for sales representatives (including a name, telephone number, address, and email address). |
| Application Process Explanation | An explanation of the application process and the deadline for submitting applications. If the development is phased, the developer must establish deadlines for each phase of the development that includes BMR Units. |
| Selection Process Explanation | An explanation of the buyer selection process, including an explanation of the Preference Point system. |
| Sales Training Timelines | Timeline for the developer's sales staff to meet with the City's Housing staff to receive training on the sale selection and application process. |
| Application Timelines | Timelines for application submittals buyer selection. If the development is a phased project, information must be provided on the number of phases and the timelines for those phases. |
| Marketing Materials | Copies of materials that will be used to market the BMR Units. |
| Application Packet | The application packet must include: <ul style="list-style-type: none">• Application for Inclusionary Unit• Disclaimer for BMR Units• Credit Authorization and Release• Signed Sample Resale Disclosure Statement• Required Supporting Documentation Checklist• Highlights of Dublin Resale Restriction Agreement |

No marketing of the BMR Units shall begin until the developer has received written approval of the Marketing and Sales Plan from the City and the developer's sales staff has met with City Staff for training so that the sales staff understands and can explain the application process.

4.4.2 Developer Process for BMR Units

The developer must comply with the following process to sell the BMR Units (see **Figure 2** for an overview):

- 1. Application Collection and Screening.** Developer collects applications for the period of time set forth in the approved Marketing and Sales Plan. Developer screens applicants to determine whether they satisfy the requirements for Qualified Households set forth in **Section 3**. Developer also performs a credit check on applicants as set forth in **Section 4.3**. The credit check must be completed to proceed with review of the application.

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2. Preference Points/Priority List.

Developer sorts and ranks the Qualified Households based on the Preference Points and creates a Priority List with those applicants with the most Preference Points at the top, followed by all other applicants in descending order based on the number of Preference Points received. If more than one qualified applicant receives the same number of Preference Points or if some applicants receive no Preference Points, the developer will rank the Qualified Households based on other objective criteria outlined in its approved Marketing and Sales Plan. For example, the developer may date stamp all applications and, in the case of a tie, rank the Qualified Households based on who applied first, or the developer may choose to hold a lottery to break ties. However, whichever criteria the developer uses must be set forth in its approved Marketing and Sales Plan.

3. Priority List and Application Packets Submittal.

Developer completes the Priority List within 30 days of the application deadline outlined in the Marketing and Sales Plan. Developer submits **complete** application packets of Qualified Households (including supporting documentation) to the City within 45 days of the planned close of escrow.

4. City Review and Verification.

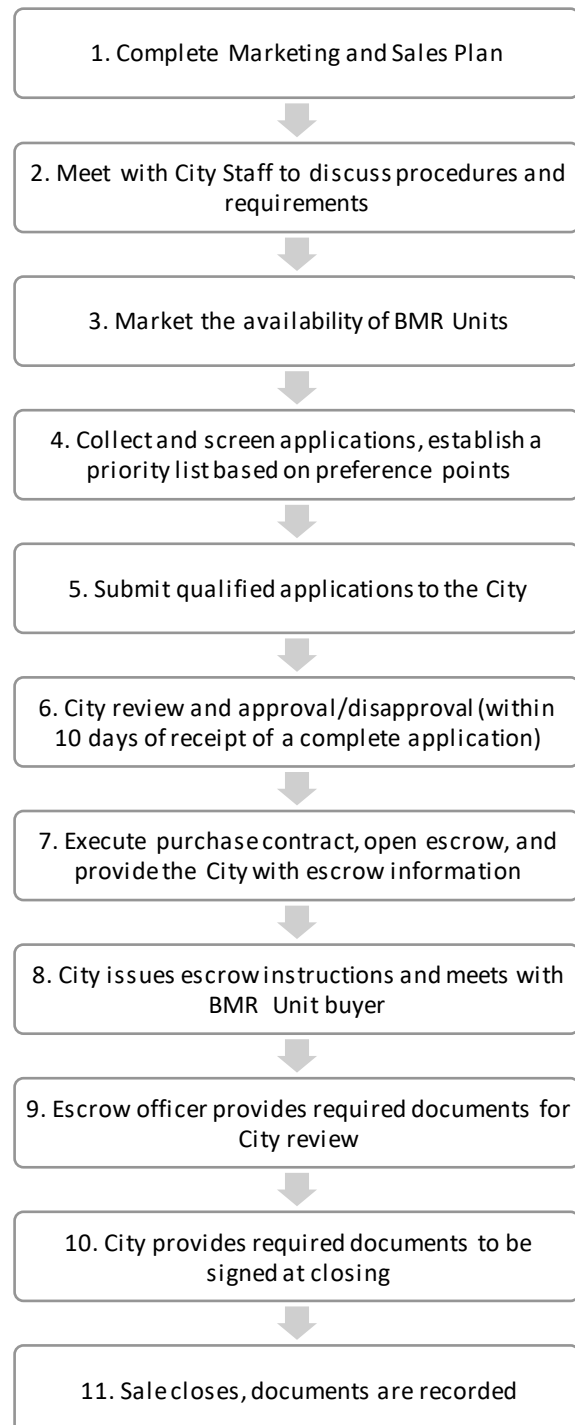
The City reviews the application packets to verify the applicants are Qualified Households. The City will make every effort to review the applications within 10 working days of receiving a complete application packet.

5. Qualification/Disqualification.

Once the City has verified that the applicant is a Qualified Household, the City will send the developer a conditional qualification letter (or similar document) indicating the applicant's name and income level, the maximum sale price of the unit (see **Section 4.2** for more detail on establishing the sale price), and any requirements that must be met before moving forward with the applicant. The conditional qualification letter is valid for 6 months from the date of the letter. A copy of the application packet, along with income verification for the household, will be retained

Figure 2.

Initial BMR Unit Sale Process for Developers



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by the City as proof of the buyer's qualification to purchase the BMR Unit. If the City determines that the applicant is not a Qualified Household, the City will send the developer an ineligibility letter. An applicant who has been deemed to be ineligible may not reapply for a period of 1 year from the date of the ineligibility letter.

The developer bears the responsibility of ensuring that applicants are not qualified more than 6 months before a BMR Unit becomes available and closes escrow. Applicants must be requalified if close of escrow is to take place more than 6 months from the date of the conditional qualification letter. Applicants may or may not qualify to purchase a BMR Unit upon requalification. In addition, the price of the BMR Unit may change upon requalification.

Conditional approvals are based on information supplied to the City by the developer or its agent. If any material changes to the financial conditions, marital status, employment status, or other information are made known prior to loan closing, the developer, its agent, or the lender must notify the City of Dublin in writing of these changes. The City expressly reserves the right to reverify the applicant(s) and may void or cancel this conditional approval or other approval at any time prior to the loan closing if material changes affect the qualification status of the buyer(s). Material changes to the composition of the household (such as household members added or removed) during the application process will result in the application being moved to the bottom of the Priority List.

Qualification determinations may be appealed in accordance with the procedures described in **Section 7**.

The sale cannot proceed until all required documents are provided to the City and the developer receives a written qualification letter from the City.

6. **Offer to Purchase/Purchase Agreement.** The developer will offer the unit to Qualified Households based on the Priority List, offering the BMR Unit first to those applicants with the most Preference Points, then to other applicants in descending order. The developer and the applicant will enter into a purchase agreement. A copy of the signed agreement must be provided to the City.
7. **Escrow Instructions.** The developer will provide the City with the name and address of the title company closing the sale and the name of the escrow officer. The City will prepare and send escrow instructions to the escrow officer.
8. **Receipt of Documents.** The escrow officer will submit the following documents to the City:
 - Appraisal, Title Report, Completed and Signed Uniform Residential Loan Application; Loan Estimate, Estimated Settlement Statement, Closing Disclosure, Note, and Deed of Trust;
 - Completed, executed, and notarized Resale Restriction Agreement and Option to Purchase; and
 - Completed, executed, and notarized Performance Deed of Trust.
9. **Compliance Review.** Prior to the City sending the Resale Restriction Agreement and Option to Purchase and Performance Deed of Trust to the title company for signing, the City will review all final documents for completeness and compliance with Program requirements.

4. PROCEDURES FOR OWNERSHIP BMR UNITS

10. Prepare and Record Documents. When all documents have been received and are deemed in compliance with Program requirements, the City will prepare and send the Resale Restriction Agreement and Performance Deed of Trust to the escrow officer to be reviewed and signed by the BMR buyer. Once signed by the buyer, the escrow officer will send the original documents to the City. The City will prepare the Request for Notice of Default for each of the buyer's loans and secure the signature of the City Manager or his/her designee on the necessary documents. The City will send the original signed Resale Restriction Agreement, Performance Deed of Trust, and Request(s) for Notice of Default to the escrow officer for recording. After close of escrow, the title company will provide the City with a Final Settlement Statement and \$1,500 check for the City Administration Fee.

If at any time during the application, screening, or sale process, an applicant requires translation services, the developer will provide such services at the developer's sole cost and expense.

4.5 Procedures for BMR Purchase

This section applies to households interested in purchasing a BMR Unit.

4.5.1 Qualifying and Purchasing a BMR

The following are the general steps for qualifying for and purchasing a BMR Unit (see **Figure 3** for an overview):

1. **Review Qualification Requirements.** Potential BMR Unit buyers should review these Guidelines and confirm that they meet established qualification requirements (see **Section 3**).
2. **Prequalify with a Lender.** Potential BMR Unit buyers should work with a lender of their choosing to get prequalified to purchase a home. Potential financing must meet the requirements described in this section. This step is necessary in the preparation of a complete application and will give the buyers a clear understanding of the amount of money they are eligible to borrow for a home purchase.

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3. **Identify a BMR Unit.** If eligible, potential buyers should identify and view BMR Units available for sale, including newly constructed units or resale units (available BMR Units must be listed on the City's website).
4. **Prepare Application Package.** When the BMR buyers find a BMR Unit that they would like to purchase, the potential buyers should work with a real estate agent or developer's sales staff to confirm eligibility, complete the City's BMR homeownership application, and compile qualification materials. The complete application must be submitted to the City's Housing Division. Buyers should also follow other offer and material submittal requirements and timelines as established by the listing agent or developer.
5. **City Review and Qualification Determination.** The City will make every effort to review the application and qualification materials and determine program eligibility within 10 working days of receipt of a complete application. If the application is approved, the City will send the developer or agent a conditional qualification letter (or similar document). The letter will be valid for 6 months from the issue date. Applicants who are determined ineligible will receive an ineligibility letter. Ineligible applicants may not reapply to purchase any BMR Unit for a period of 1 year from the date of the ineligibility letter.
6. **Execute Contract.** Once the BMR buyer household has confirmed eligibility and received a conditional qualification letter from the City, the BMR buyer should execute a purchase contract with the seller. The agent should open escrow and provide escrow information to the City. The City will prepare escrow instructions and submit them to the escrow officer.
7. **Homebuyer Education.** Potential BMR Unit buyers must complete an 8-hour

Figure 3.
BMR Purchase Procedure



4. PROCEDURES FOR OWNERSHIP BMR UNITS

homebuyer education course prior to the anticipated close of escrow date (see definition in **Section 1.1**).

8. **In-Person Consultation.** Potential BMR buyers must schedule and complete an in-person consultation with City Staff (see below).
9. **City receives mortgage and appraisal documents from escrow.** City Staff reviews documents to make sure they are consistent.
10. **City provides closing documents to escrow.** City Staff will prepare all closing documents and deliver them to escrow.
11. **Sign Paperwork.** Following receipt of required paperwork from the escrow company, the City will prepare the Resale Restriction Agreement and Performance Deed of Trust for the BMR buyer to sign at close of escrow. Once the BMR Unit buyer has signed, the paperwork will be delivered to the City for signature. The City will forward this paperwork as well as a request for notice of default on the BMR Unit buyer's loan to the escrow officer for recordation.

4.6 Post-Sale Procedures for BMRs

4.6.1 Owner-Occupancy Status Monitoring

The BMR Unit Owner is required to occupy the BMR Unit as his/her Principal Residence. The City conducts monitoring of the owner-occupancy status of the BMR Unit on an annual basis. The BMR Unit Owner must complete annual owner-occupancy monitoring surveys and submit these to the City (see below). These surveys will be sent electronically, and the owner is responsible for ensuring the Housing Division has their correct contact information at all times. Failure to complete the annual monitoring shall be considered a default of the Resale and Restriction Agreement.

4.6.2 Owner Occupancy Exception

Ownership BMR Units are subject to an owner-occupancy requirement. However, under the following limited circumstances, a BMR Unit Owner may be permitted to temporarily rent his or her unit (not to exceed 12 months) to a Qualified Household (see **Section 3** for household requirements which apply to both renters and owners) to alleviate one or more of the following specified hardships:

- The BMR Unit Owner is unable to resell the unit as described in **Section 4.7**;
- The BMR Unit Owner must temporarily relocate for employment purposes; or
- The BMR Unit Owner must attend to personal health problems or the health problems of an immediate family member.

The temporary rental is reviewed on a case by case basis and shall not exceed 12 months under any circumstance. The BMR Unit Owner must request and obtain **advance** written permission from the City to rent the BMR Unit before advertising the unit and selecting a qualified tenant. Once the request is approved and a qualified tenant is selected, the BMR Unit Owner must execute a rental agreement that clearly states:

1. That the term of the rental is for a limited period of time (not to exceed 12 months);

4. PROCEDURES FOR OWNERSHIP BMR UNITS

2. The amount of the monthly rental payment (set in accordance with the maximum monthly rent calculated in accordance with the Ordinance and published annually **or** the BMR Unit Owner's total monthly housing costs [mortgage payment – principal plus interest, HOA fees, and property taxes], **whichever is less**).

The BMR Unit Owner must submit a copy of the executed rental agreement to the City and, within 10 days of execution of the rental agreement, sign a Rental Regulatory Agreement with the City. The signed Rental Regulatory Agreement will be recorded against the property.

Failure to obtain permission for temporary rental shall result in payment to City of any rents or income received from the home rental, and/or legal fees required to bring the home into compliance, as outlined in the Deed of Trust and Resale Agreement. A Notice of Default will be recorded for any unpermitted rental not cured within thirty days from official notice.

4.6.3 Refinance Requirements

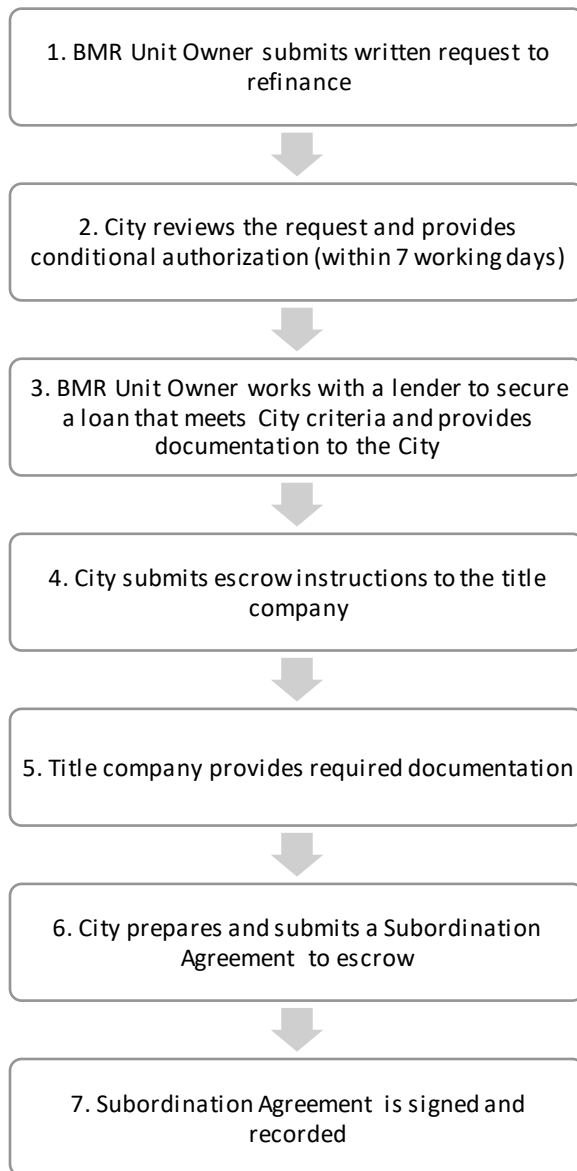
BMR Unit Owners may refinance their units; however, financing terms are subject to the restrictions noted in **Section 4.3.6**, and the terms stated in the Resale Restriction Agreement. BMR Unit refinances are subject to an administrative fee.

4.6.4 Refinance Procedure

BMR Unit Owners must comply with the following procedures when refinancing an ownership BMR Unit (see **Figure 4** for an overview of the refinance process):

1. **Inform the City.** The BMR Unit Owner must inform the City of his or her desire to refinance. Notification must be submitted in writing and must be accompanied by a copy of the BMR Unit Owner's most recent mortgage statement.
2. **City Review.** The City will review the refinance request within 7 working days to verify that the proposed loan terms are in keeping with City requirements and terms outlined in the Resale Restriction Agreement. If the loan is found acceptable, the City will issue a conditional authorization letter to the BMR Unit Owner. The letter will outline documentation needed by the City, which typically includes an Appraisal, Loan Estimate, and Title Report.

Figure 4.
BMR Unit Refinance Process



4. PROCEDURES FOR OWNERSHIP BMR UNITS

3. **Document Preparation and Closing.** Once all requested documents are received and deemed acceptable, City Staff will issue escrow instructions to the title company. The instructions will outline the final documents the City needs to prepare closing paperwork. Once received, the City will prepare and submit a Subordination Agreement to the title company to be reviewed and signed by the BMR Unit Owner and the bank. The documents will then be signed by the City and recorded.

4.6.5 Capital Improvements

BMR Unit Owners may make modifications to improve their home for maintenance and aesthetic purposes, as allowed by the HOA, if applicable. For certain Approved Capital Improvements (i.e., permanent changes that improve the health, safety, or efficiency of the home), the adjusted resale price of the BMR Unit will be increased. Approved Capital Improvements are limited to those improvements paid out of pocket by the BMR Unit Owner. Repair costs paid by an insurance company are excluded. It is the responsibility of the BMR Unit Owner to keep cost and accounting records of all Approved Capital Improvements. **Capital Improvement credits will only be reviewed and authorized if requested prior to work being completed.**

Capital Improvements Minimum and Cap

To be considered in the adjusted resale price, the initial cost of capital improvements must total \$1,000 or more. In order to maintain the affordability of the BMR Unit for subsequent buyers, at the time of sale, BMR Unit Owners may receive credit for Approved Capital Improvements up to a maximum of 5% of the adjusted resale price.

Procedure for Requesting Approval of Capital Improvements

The City will approve allowed capital improvements that improve the health and safety conditions of a BMR Unit. To request such approval, the BMR Unit Owner must:

1. Complete a Request for Capital Improvement form and submit the form along with a cost estimate for the capital improvement(s);
2. Receive written approval from the City **prior** to commencing any improvements; and
3. Submit documentation to the City within 30 days of completion of the improvements verifying that such improvements have been completed.

Upon receipt of the request and estimate for capital improvements, City Staff will review the request for compliance with these Guidelines. The City will categorize requests into three categories: (1) Eligible Capital Improvements; (2) Eligible Replacement and Repair; and (3) Ineligible Costs. Each category is described below.

The City will send a letter to the BMR Unit Owner approving or denying the requested capital improvements within 30 days of original receipt. A copy of the letter will be maintained in the BMR Unit's file at the City of Dublin for inclusion in the adjusted resale price calculation when the unit is resold.

Once the City has approved the capital improvements, the BMR Unit Owner may proceed with the work, obtaining permits from the City's Building and Safety Division, if applicable. Within 30 days of completion of the improvements and sign-off by the City's Building and Safety Division, if applicable, the BMR Unit Owner must submit all of the following information:

4. PROCEDURES FOR OWNERSHIP BMR UNITS

- A copy of the receipt/invoice for each eligible improvement;
- Proof of payment, such as a cancelled check, bank account statement, or credit card bill;
- A copy of the building permit, if required; and
- A picture or pictures of the completed work.

The City may, at its discretion, visit the job site to view the completed work.

Eligible and Ineligible Capital Improvements

Table 9 provides examples of improvements that are eligible, partially eligible, and ineligible for capital improvement credit.

4. PROCEDURES FOR OWNERSHIP BMR UNITS

Table 9. Eligible and Ineligible Capital Improvements

| | Eligible Capital Improvements | Eligible Replacement and Repair | Ineligible Costs |
|--|---|--|--|
| Description | Includes major structural system upgrades, some new additions to the unit, and improvements related to increasing the health, safety, and energy efficiency of the BMR Unit. | Includes in-kind replacement of existing amenities, repairs, and general maintenance that keeps the property in good working condition. | Include cosmetic enhancements, installations with limited useful life spans, and nonpermanent fixtures. |
| Percentage Credited | 100% | 50% | 0% |
| Example Improvements (lists are not exclusive) | Major electrical wiring system upgrade Major plumbing system upgrade Upgrade to double-paned windows Room additions (bedroom or bathroom additions not allowed) Installation of additional closets and walls Alarm system Removal of toxic substances such as asbestos, lead, or mold/mildew Insulation Upgrade to Energy Star built-in appliances, as follows: Furnace Water heater Stove/range Dishwasher Microwave hood | Electrical maintenance and repair Plumbing maintenance and repair, such as: Supply line Sinks Flooring (tile, linoleum, or hardwood) Countertops Cabinets Bathroom tile Bathroom vanity Replacement of built-in appliances, as follows: Furnace Water heater Stove/range Dishwasher Microwave hood Garbage disposal Fireplace maintenance or in-kind replacement (gas) Heating system Lighting system (recessed) | Fireplace tile and mantel Decorative wall coverings or hangings Window treatments (blinds, shutters, curtains, etc.) Installed mirrors Shelving Refinishing of existing surfaces Nonpermanent fixtures, such as: Track lighting Portable appliances (refrigerator, microwave, stove/oven, etc.) Installations with limited useful life spans, such as: Carpet Painting of existing surfaces Window glass |

Special Assessments

HOA-initiated Special Assessments are considered capital improvements and will be added to the resale price of the BMR Unit. In order to receive credit for Special Assessments, homeowners must submit the following documentation within 3 months of payment:

- Invoice for Special Assessment;
- Proof of payment, such as a cancelled check, bank account statement, or credit card bill.

4. PROCEDURES FOR OWNERSHIP BMR UNITS

Building Permits

It is the responsibility of the BMR Unit Owner to ascertain whether the work to be performed requires a City building permit and, if so, to obtain such permit. Any work that is done without a required permit will automatically be deemed ineligible as a capital improvement expense whether or not it fits within the definition of an Eligible Capital Improvement or Eligible Replacement and Repair. BMR Unit Owners may call the City of Dublin Building and Safety Division at (925) 833-6620 to inquire about building permits.

Homeowners Association Approval

The Homeowner is responsible for ensuring any capital improvements are allowed under the HOA Covenants, Conditions, and Restrictions (CC&Rs). The City shall not be responsible for obtaining approval or replacing any installed capital improvements that were not permitted by the CC&Rs. At time of resale, any capital improvements that must be removed per HOA rules shall be paid for and completed by the seller prior to close of escrow.

Room Additions/Modifications

The addition of a bedroom or bathroom to a BMR home or a Restricted Secondary Unit is not permitted. Other room modifications or additions may be approved at the discretion of the Community Development Director.

4.7 BMR Unit Resale Procedures

BMR Unit Owners must comply with the following procedures when reselling an ownership BMR Unit (see **Figure 5** for an overview of the resale process):

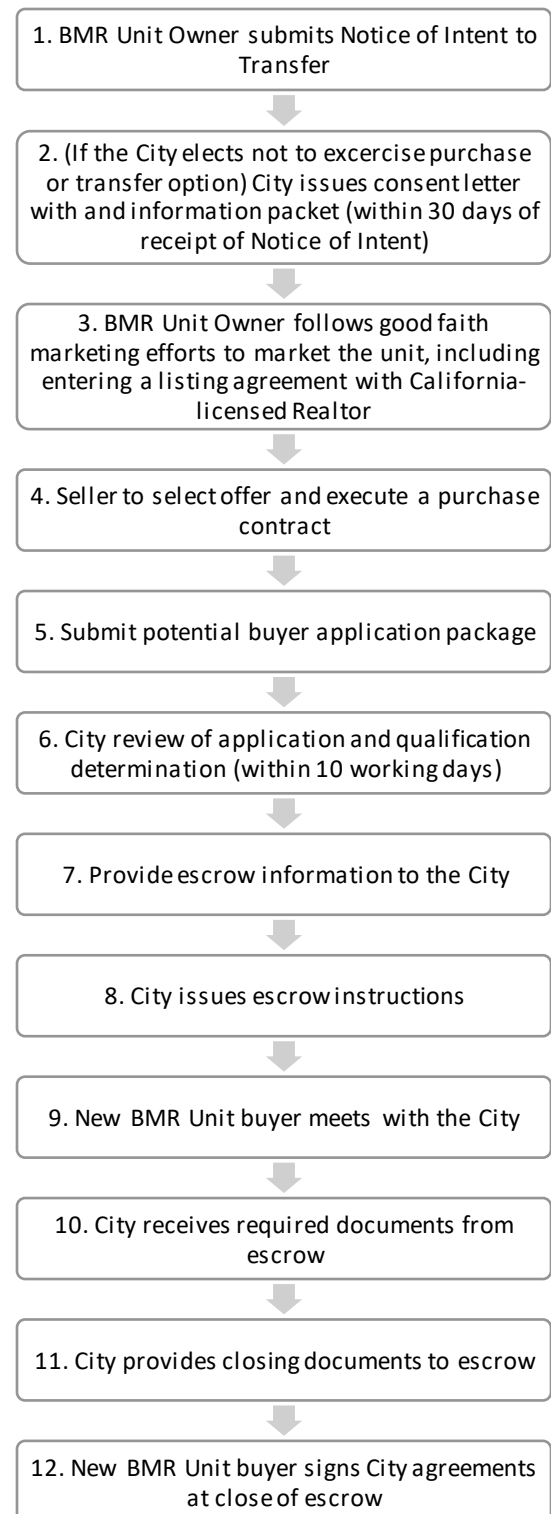
1. **Inform the City.** The BMR Unit Owner must inform the City of his or her intent to sell the unit by filling out a Notice of Intent to Transfer (Exhibit B to the Resale Restriction Agreement) and submitting it, along with any letters from the City for Approved Capital Improvements, to the City. (The owner may still decide not to sell his/her unit after submitting these documents.)
2. **City Option to Purchase/Consent to Transfer.** The City may exercise its option to purchase the unit or transfer its right to purchase the unit to a designated entity. The City will make this determination and inform the BMR Unit Owner of its intent within 30 days of receipt of the Notice of Intent to Transfer. **Owner should not enter a listing agreement with an agent nor list the unit on the Multiple Listing Service until receiving the City's Consent to Transfer letter.** If the City opts not to purchase the unit or transfer its purchase option, the City will send the BMR Unit Owner a *Conditional Consent to Transfer* letter and a packet of information that will assist the BMR Unit Owner in finding another Qualified Household to purchase the unit. The Conditional Consent to Transfer letter will be valid for 180 days from the date of the letter and will include the maximum restricted resale price of the unit and any other conditions of sale such as the good faith marketing efforts.

4. PROCEDURES FOR OWNERSHIP BMR UNITS

3. **Marketing.** The BMR Unit Owner must market the unit with a licensed Realtor or Broker and pay all fees associated with the sale of the unit. Upon entering into a listing agreement with a licensed Realtor pursuant to the requirements of this section, the agent must contact the City to learn the requirements for listing the property. All marketing tools must indicate the BMR Unit is part of the specific program and the current income limits, and must be reviewed by the City prior to publications, please contact the Housing Division for the required language. The payment of Real Estate Commission shall not be used as a negotiation tool for a prospective buyer. The Commission paid by Seller must be equal to the amount identified at time of unit listing.
4. **Execute Purchase Contract.** The BMR Unit Owner executes a purchase contract with the qualified buyer and opens escrow. The BMR Unit Owner's Realtor will provide a copy of the contract to the City along with the name, address, and phone number of the title company handling the transaction and the name of the escrow officer.
5. **Potential Buyer Application.** Once the potential buyer's offer has been accepted, at least 30 days prior to the anticipated date of the close of escrow, the prospective buyer must submit the following documentation to City Staff for approval:
 - a. The buyer qualification documentation set forth in **Section 3**;
 - b. Evidence of completion of a below market rate homebuyer education workshop;
 - c. A loan preapproval letter and Loan Estimate;
 - d. A signed Disclosure Statement (Exhibit F of the Resale Agreement);
 - e. A signed Credit Authorization and Release Form, or similar document;
 - f. Copy of official, recent, tri-merge credit report (or check to City of Dublin to run a report);

Figure 5.

BMR Unit Resale Process



4. PROCEDURES FOR OWNERSHIP BMR UNITS

- g. Copies of federal income tax returns for the last 3 years (including the most recent year) with all related schedules (i.e., W2s) or IRS verification of non-filing (if applicable);
 - h. Copies of financial statements from all accounts for the 3 most recent months;
 - i. Copy of identification documentation: current United States passport; or state-issued photo identification card and social security card;
 - a. Letter(s) of explanation (for any uncommon financial, employment, or other unique events or circumstances); and
 - b. Evidence of 3% available funds to be used as a down payment.
6. **Potential Buyer Qualification.** The City will notify the owner within 10 business days of receipt of complete packet of documentation as listed above of its approval or disapproval of the prospective buyer. The City reserves the right to request additional information to confirm eligibility. Please note- no applications will be accepted by City staff unless their purchase offer on a BMR home has been accepted.

4.7.1 Restricted Resale Price Calculation

The resale price of a BMR Unit is dependent on Area Median Income (AMI) at the time of sale and the value of Approved Capital Improvements and is rounded to the nearest \$100.

The resale price is equal to:

1. The lowest of the (i) original price paid by the owner for the BMR Unit, increased by an amount equal to the original price multiplied by the percentage increase in AMI between the effective date of the Resale Restriction Agreement and the date the City receives the owner's Notice of Intent to Transfer (for instance, if the original price of the unit was \$200,000 and the median income increases 2% between the effective date of the Resale Restriction Agreement and the date the City receives the owner's Notice of Intent to Transfer, the unit price will increase by 2%, or \$4,000, to \$204,000); **or** (ii) the fair market value of the BMR Unit as determined by an appraiser approved in writing by the City; **plus**
2. The cost of Approved Capital Improvements (with the City's approval evidenced in writing); **minus**
3. The cost to repair damage to the BMR Unit and to place the unit into saleable condition (the City will make the determination of what is considered damage to a unit, normal wear and tear shall not be included); such items may include, but are not limited to, ripped or torn carpet, damage to kitchen or bathroom appliances or fixtures, broken light fixtures, broken or missing tiles and/or grout around tiles, or damage to floors; **minus**
4. The amount of all costs advanced by the City for the payment of mortgages, taxes, assessments, insurance premiums, HOA dues, and/or associated late fees, costs, penalties, interest, attorneys' fees, pest inspections, resale inspections, and other expenses related to the BMR Unit which the owner has failed to pay or has permitted to become delinquent.

See **Example 13** for a sample maximum restricted resale price calculation.

4. PROCEDURES FOR OWNERSHIP BMR UNITS

Example 13. Maximum Restricted Resale Price Calculation

A BMR Unit Owner purchased her home in 2008 for \$300,000 and would like to sell the unit in 2017. The BMR Unit Owner received City approval to replace worn carpeting (eligible at 50% of total cost) for a credit of \$2,000. The maximum restricted resale price is calculated as follows:

| | |
|--|-----------|
| Purchase price (2008) | \$300,000 |
| Area Median Income (2008) | \$86,100 |
| Area Median Income (2017) | \$97,400 |
| Percentage change in median income from 2008 to 2017 | 13.12% |
| Increase in value | \$39,360 |
| Approved Capital Improvement credits | \$2,000 |
| Maximum Restricted Resale Price (2017) | \$341,360 |

4.7.1.1 BMR Unit Marketing

BMR Unit Owners shall follow current best practices for home marketing. The City will provide BMR Unit Owners with a Good Faith Marketing Efforts Information packet with the City's Conditional Consent to Transfer letter (see **Exhibit 5** for sample good faith marketing efforts information). Compliance with the following provisions constitutes a good faith marketing effort:

- **BMR Unit Condition** – The BMR Unit shall be offered for sale in a condition similar to or better than at the time of the BMR Unit Owner's purchase. The BMR Unit shall be kept and maintained in decent, safe, and sanitary conditions (e.g., ensuring carpets are professionally cleaned, facilities such as bathroom and kitchen are in proper operating condition, illumination and lighting of unit are adequate, unit is free of vermin and rodent infestation, unit is structurally sound). Alterations that may result in a reduction in value (such as removal of walls, bedrooms, or bathrooms, or downgrades to appliances, flooring, or finishes), or poorly maintained or inoperable items will be corrected prior to the initiation of BMR Unit marketing at the expense of the existing homeowner/seller. A home inspection must be conducted for all BMR home sales; any significant repairs needed to the home or included appliances shall be the responsibility of the seller prior to close of escrow.
- **Professional representation** – The BMR Unit Owner will execute a listing agreement with an active Realtor, currently licensed by the California Bureau of Real Estate. Listing a BMR Unit as 'For Sale by Owner' is prohibited. The seller of the home shall be responsible for paying all real estate commission costs, up to a maximum of 6%. No removal of these set commission costs or credits are allowed by the buyer or buyer's agent to promote their offer.
- **City of Dublin website** – The BMR Unit Owner or Owner's agent will submit a copy of the MLS listing prior to activation to the Housing Division to advertise the resale on the City of Dublin's website.
- **Listing** – The BMR Unit will be listed as an active property on the Multiple Listing Service (MLS) maintained by the East Bay Association of Realtors. The listing must be sent to City Housing staff prior to activating the listing to ensure all language is appropriate. The listing will include the following:

4. PROCEDURES FOR OWNERSHIP BMR UNITS

- **BMR Unit photographs** – At least one exterior photograph and at least three well-lit interior photographs of the BMR Unit in keeping with current industry practices.
- **Property data** – Pertinent data including, but not limited to, asking price (at or below the maximum restricted resale price), location, square footage, number of bedrooms, number of bathrooms, unit features and amenities, development features and amenities, current amount of HOA dues (if applicable), and information about parking spaces and restrictions.
- **BMR Unit statement** – A clear statement that the home is a BMR Unit and that potential buyers must meet income and other requirements. The statement must comply with the City's Required Multiple Listing Service Language Requirements (see good faith marketing efforts sample information).
- **Professional showings** – The BMR Unit Owner and the agent will make the home available for at least two open houses including a weekend open house, a week day open house, and individual showings with interested buyers and agents representing interested buyers. The first open house must occur at least 24 hours after the listing has been approved by the City and placed in the MLS and City website.
- **Offer Acceptance Due Date** – The BMR Unit Owner and the agent will set an Offer Acceptance Due Date that is at least 5 days after the date of the second unit showing. No maximum number of offers may be set.

4.7.1.2 Fees Associated with the Selling of a BMR Unit

The BMR Unit Owner (the seller) is responsible for all fees associated with the sale of the unit including, but not limited to, all *pre-determined* real estate commission costs, transfer tax fees, and the City's Administration Fee, which may be adjusted on an annual basis as part of the City's Fee Schedule. These fees cannot be negotiated or paid for by the buyer or buyer's agent to leverage an offer.

4.7.1.3 Special Exceptions for Units Unable to Resell

The City may offer special consideration where the BMR Unit Owner has been unable to attract a buyer and at least one of the following conditions applies:

- The BMR Unit Owner has made a good faith effort to market the BMR Unit for 6 or more months, as defined in this section;
- The resale price for the BMR Unit is at or below current comparable market-rate units; or
- Financing for the BMR Unit is unavailable due to pending litigation in the project or the ratio of rental to ownership housing units in the project is unacceptable to lenders.

On a case-by-case basis, upon request by the BMR Unit Owner, the City will consider granting one or more of the following exceptions on a one-time basis:

1. The BMR Unit Owner may rent the unit to a Qualified Household for a maximum of 12 months in keeping with the provisions of **Section 3** (see also **Section 4.6.2**);
2. A one-time waiver of the first-time homebuyer qualification requirement for a potential BMR buyer;
3. A one-time waiver of the asset test for a potential buyer;

4. PROCEDURES FOR OWNERSHIP BMR UNITS

BMR Unit Owners who are unable to sell and may seek an exception should contact City Staff for a consultation. Sufficient evidence of the above conditions must be provided to Housing Division Staff prior to consultation.

4.7.1.4 *Release of Resale Restrictions*

Upon written request by the BMR Unit Owner, the City may authorize the release of resale restrictions and allow a BMR Unit Owner to sell the BMR Unit at a market-rate price where the BMR Unit Owner has been unable to attract a qualified buyer and at least one of the following conditions applies:

- **Proven hardship.** The BMR Unit Owner has made a good faith effort (BMR Unit Owner has complied with **all** marketing provisions as set forth in this section) to sell the BMR Unit for 9 or more months and has a specific need to sell the home due to financial or personal hardship. Eligible hardships include:
 - A change in annual household income that has resulted in housing costs (mortgage payment, HOA dues, property taxes, and property insurance) exceeding 75% of monthly income;
 - Relocation of employment to a work site that is 60 miles or more from the City of Dublin; or
 - The maximum restricted resale price, as provided by City Staff in the current Consent to Transfer letter is below or within 10% of that of recent (within 3 months) sales prices of comparable nearby market-rate homes as evidenced by documentation of these comparable sales (list prices are not acceptable).
- **Excessive time on market.** The BMR Unit Owner has made a good faith effort (BMR Unit Owner has complied with **all** marketing provisions as set forth in this section) to sell the BMR Unit for 9 or more months.

In either instance, sales in which resale restrictions are approved for release are subject to all of the following requirements:

1. **Excess proceeds.** The City is entitled to 100% of any increase between the market-rate resale price as stated in the purchase contract and the maximum restricted resale price, as quoted by City Staff in the Consent to Transfer letter.
2. **Resale price.** The allowable contract market-rate resale price is subject to City approval, based on a formal evaluation by a City-approved appraiser. If the City requires the services of an appraiser other than the appraiser retained to evaluate the property in connection with the buyer's loan, the City will pay the cost of the appraisal (to be deducted from City proceeds in the closing process and reflected on the final settlement statement).
3. **Owner occupant.** The subject BMR Unit must be sold to a buyer who will personally occupy the unit. Sales to investors are prohibited. The buyer's intent to occupy must be reflected in the ratified purchase agreement and on loan documents, if applicable.
4. **Loan repayment.** If the BMR Unit Owner took out a City First-Time Homebuyer Loan Program loan, the loan must be repaid in full (principal plus interest) during or before the close of escrow.

5 Procedures for Rental BMR Units

5.1 Overview

After the Affordable Housing Agreement is executed, and prior to the issuance of any building permits, the developer of a project that includes rental BMR Units must prepare and submit a Marketing and Management Plan to the City of Dublin Housing Division for approval. A sample Marketing and Management Plan is attached as **Exhibit 4**. After the Marketing and Management Plan has been approved by the City, and prior to the rental of any units, the developer must screen, rank, and qualify eligible tenants and send a priority list to the City of Dublin's Housing Division. This should happen within 30 days, if possible. **Figure 6** provides an overview of the BMR Unit rental process.

5.2 The Marketing and Management Plan for Rental BMR Units

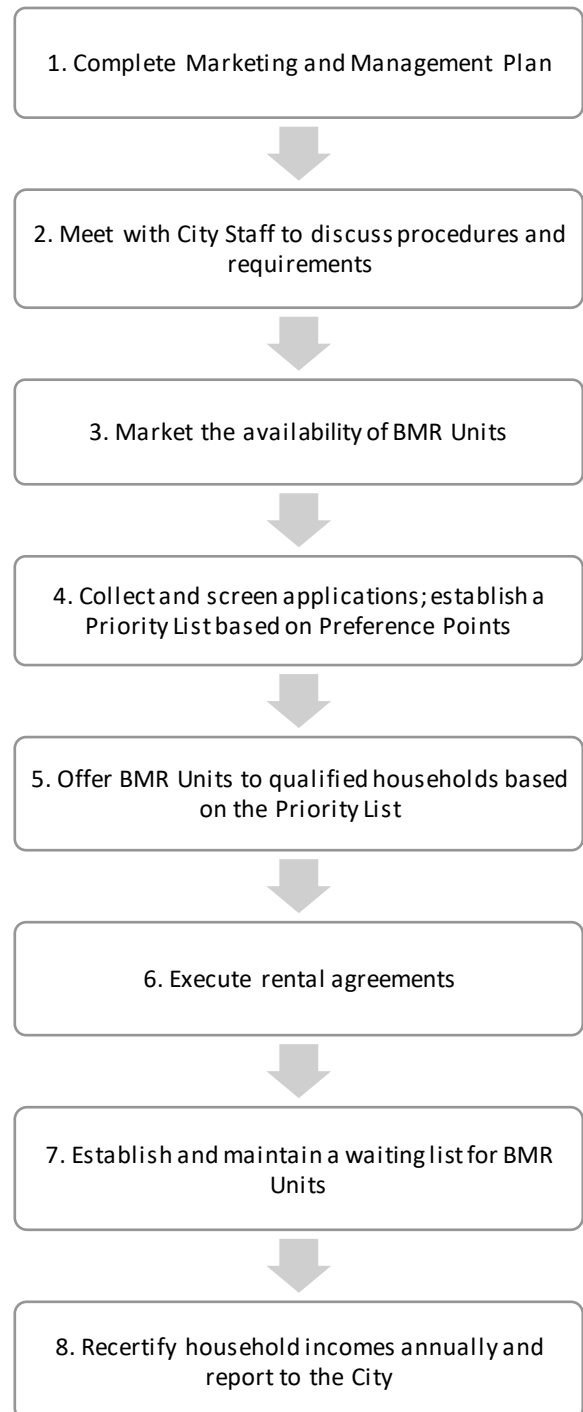
Prior to the issuance of building permits, the developer must submit a Marketing and Management Plan to the City for its approval.

The Marketing and Management Plan must contain the following information:

- A plan outlining how the property management firm will market and maintain the rental BMR Units, including how the Preference Points system will be applied in the leasing of rental BMR Units;
- How the property management firm will maintain a waiting list for the BMR Units;
- How the management firm will verify applicants' Total Household Income, both initially and annually in the recertification process;
- How the property management firm will review and implement annual rent increases;
- Details on the amenities, rent costs, and other details that may differ between market-rate units and BMR Units;

Figure 6.

BMR Rental Process



5. PROCEDURES FOR RENTAL BMR UNITS

- A clear process for managing resident complaints, including complaint escalation procedures;
- Information on the units to be made available for publication on the City's website;
- A contact telephone number; and
- The names of those individuals responsible for contact and communication with the City.

5.2.1 Next Available Unit Rule Exceptions

In some circumstances, property owners may have difficulty qualifying applicants for BMR Units due to a combination of issues including lack of vacancy, a shortage of suitable units in assorted sizes, and differing requirements based on different funding sources. In some cases, this difficulty can result in failure to meet the City's requirements—including maintaining the correct number of BMR Units. Property owners should include a policy in their Marketing and Management Plan that details alternate procedures that will provide property managers with an exception to the Guidelines while continuing to meet the intent of the BMR Program, to address situations where strict adherence is impossible due to market or other external forces.

The City may allow the property owner to propose alternative procedures as an exception to certain qualification rules, if the property owner can provide clear evidence that the failure is a result of external market forces, such as those mentioned above. Property owners may contact the Housing Division in writing to propose these additions to their internal procedures. City Staff will then require that these alternate policies are detailed in writing and combined into the development's internal Marketing and Management Plan. Property owners may not proceed in operating under these revised policies without prior, written approval from City Staff.

5.3 Application and Screening Process

The property owner and their leasing staff are responsible for occupant selection and documentation of rental BMR Units. The leasing staff should be trained to understand and explain the rental application process to applicants.

The leasing staff must require each applicant to complete and return to them a Rental BMR Unit Application packet.

For the initial lease of rental BMR Units, the property owner's leasing staff must do the following:

1. Collect applications for a specified time period.
2. Screen applicants to determine whether they satisfy the requirements for Qualified Households set forth in **Section 3**.
3. Sort and rank the applications of Qualified Households based on the Preference Points and produce a Priority List with those applicants with the most Preference Points at the top, followed by all other applicants in descending order based on the number of Preference Points received. If more than one applicant receives the same number of Preference Points or if some applicants receive no points, the developer will use other objective criteria set forth in the approved Marketing and Management Plan to select occupants. For example, the management firm may date stamp all applicant applications and, in the event of a tie, offer the unit to the Qualified Household that applied first, or the management firm may choose

5. PROCEDURES FOR RENTAL BMR UNITS

to hold a lottery to break ties. However, whichever criteria the management firm uses must be set forth in the approved Marketing and Management Plan.

4. Complete the Priority List within 30 days of the application deadline and submit the list to the City for approval.
5. Offer the BMR Units to applicants based on the Priority List, offering first to those applicants with the most points, then to other applicants in descending order.
6. Execute a Rental Agreement with the tenant that notifies the tenant that he or she may not sublease the unit and that annual certification is required.
7. Maintain applications with income verification and recertification for the City to review during annual on-site monitoring.

Qualification determinations may be appealed by the property owner in accordance with the procedures described in **Section 7**. The Marketing and Management Plan describes the process for marketing, screening, and application procedures after the initial lease-up (i.e., unit turnover).

5.4 Maximum Allowable Rents for BMR Units

Certain BMR developments are required to set their rents below City-imposed limits. These limits are based on a percentage of the annual limits, as produced by HCD each year. The calculations by income level are shown in **Table 10**. The City of Dublin will publish the annual rents every spring. Each BMR development shall use the rents established by the City as a **maximum** rent charged, and lower rents can always be charged to BMR tenants.

Table 10. Maximum Monthly Rents

| Income Level | Maximum Rent Calculation |
|---|---|
| Very Low (50% AMI) | 30% of the annual very low-income limit divided by 12 |
| Low (80% AMI) | 30% of the annual low-income limit divided by 12 |
| Moderate (120% AMI) | 30% of 110%* of AMI divided by 12 |
| <i>Rents based on calculation of unit size by number of bedrooms according to income level designation.</i> | |

**Rent based on 110% AMI to ensure moderate income rent is below market rate rent.*

Each year, the City will distribute a memorandum to all BMR rental developments that includes updated maximum monthly rents for each unit type, according to the calculations above. These income limits and maximum rents are published once a year. Should the BMR rental property decide the rents should be increased due to the City's new maximum rents, Property Managers must follow all California laws and Civil Codes for legal rent increase protocol. The City has the right to modify these calculations as needed on an annual

5.4.1 Rental Utility Allowance

If the tenant is required to pay for utilities, the maximum rent must be reduced to account for the cost of those utilities (the Utility Allowance), not including the cost of telephone or internet service. This allowance is determined by the Housing Authority of Alameda County. More information can be found at www.haca.net.

5. PROCEDURES FOR RENTAL BMR UNITS

5.5 Monitoring

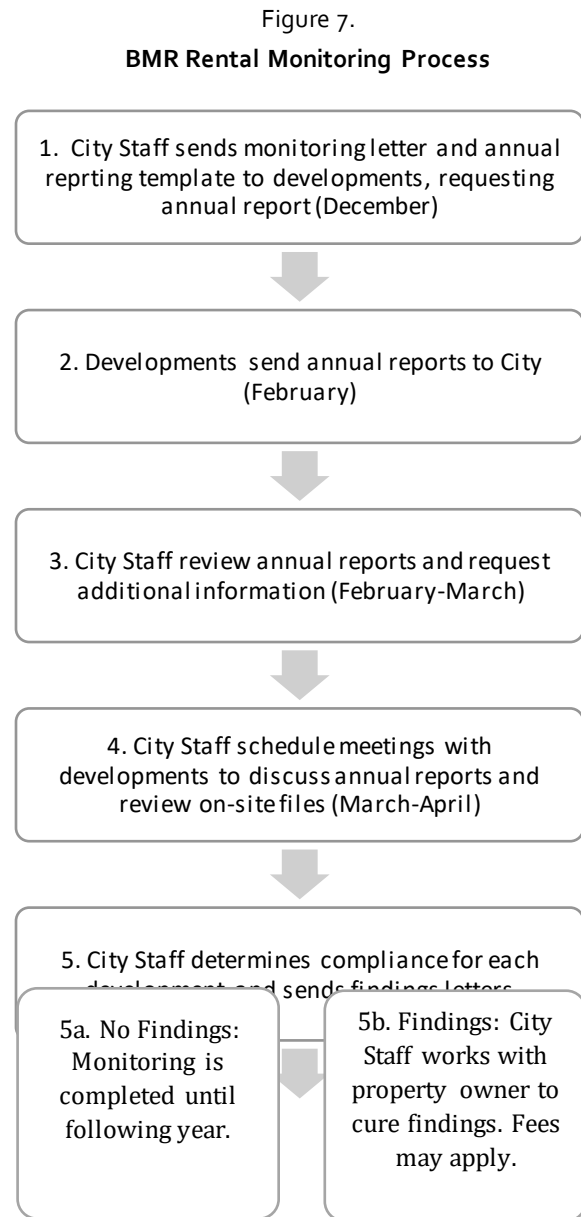
Pursuant to Section 8.68.050.B of the Inclusionary Zoning Regulations Ordinance, the property owner (or the owner's authorized agent) of the development must submit an annual report to the City. **Figure 7** outlines the monitoring and findings process.

5.5.1 Annual Report Process

By December 15 of each year, the City will send a letter to BMR property managers to request the annual report. This letter will include a copy of the Annual Report Form for completion and certification and an invoice for the annual monitoring administration fees. The property owner is free to use any format that is most convenient for the report, but is required to include the information listed above. The property owner will have 45 days from the date of the letter to submit the report.

The annual report must include at a minimum the following information for each rental BMR Unit. Additional information may be requested as necessary.

- Unit number;
- Total Household Income;
- Number of people residing in the BMR Unit;
- Move-in date;
- Last recertification date (if applicable);
- Monthly rents charged and proposed to be charged (if rent increases are scheduled) for the BMR Unit;
- Affordability level (i.e., Very Low-Income, Low-Income, or Moderate-Income);
- Number of bedrooms and bathrooms;
- Housing Choice Voucher Program (Section 8) Status (Yes or No);
- Housing Choice Voucher Program (Section 8) Allowance (if applicable);
- Vacancy of BMR Units during the previous year (number of days).
- Identify if there was any change in property management staff who oversees the BMR certification and rentals.



5. PROCEDURES FOR RENTAL BMR UNITS

5.5.2 City Review of Rental BMR Units Annual Reports

The City will review the annual monitoring report and inform the property owner if any additional information is needed.

All units that are a part of the City's Inclusionary Zoning Regulations Ordinance will be reviewed during monitoring each year. As per the Affordable Housing Agreements, the BMR Units are required to remain affordable for a period of 55 years and must be monitored annually during that period.

Some Residential Developments use multiple funding sources to provide lower-cost housing. These sources can include tax credits, state and federal grants, and other public and private funding, each of which has unique reporting and monitoring requirements. Projects that use multiple funding sources can include a mix of units with different reporting and monitoring requirements. If a Residential Development is financed through a subsidy program that has stricter occupant selection or occupant documentation requirements than the City, the City will still review the project's annual reports, but may elect to rely on the alternate subsidy program's monitoring or audit reports and associated documentation for evidence of program compliance. Property management firms with a mix of subsidized units should send to the City copies of the documentation that is required and produced for other monitoring agencies as part of their annual monitoring report.

5.5.2.1 On-Site Visit

The City will perform an annual site visit during February and March to monitor the records of all BMR Units following receipt of the Annual Report. The City will provide at least 2 weeks' notice to the property owner and/or leasing staff as to the date of the site visit. Files for all BMR Units must be made available for review at the request of the City. The purpose of the monitoring is to ensure compliance with the City's Inclusionary Zoning Regulations Ordinance, these Guidelines, and the City-approved Marketing and Management Plan. Site visits may include unit inspections. If a site audit will include unit inspections, the City will provide the list of units to be inspected with sufficient notice so that tenants can be notified and given advance notice per state law.

5.5.2.2 Follow-Up from the City

After the conclusion of the annual monitoring process, the City will send the property owner an official "findings" letter indicating whether there were any compliance issues identified through the review process.

5.5.2.3 Letter with No Findings

A letter indicating "no findings" or "no official findings" means that the development is in compliance for the applicable monitoring year, and no additional action will be required until one of the following occurs:

- The City receives a complaint or concern from a tenant (during any time of the year) that may indicate violation of recorded agreements; or
- Monitoring for the next year commences.

5.5.2.4 Letter with Findings

A letter indicating that a development has received "findings" means that the development is out of compliance with an aspect of the program. Findings letters may be issued anytime throughout the year and do not need to be related to the annual monitoring process to remain valid. For instance, findings may be revealed as a result of tenant complaints. Follow up audits due to findings may be

5. PROCEDURES FOR RENTAL BMR UNITS

subject to additional monitoring fees depending on severity of finding, and as outlined in the City's Fee Schedule.

5.5.2.5 Cure to Findings

The findings letter will outline compliance violations as well as steps the property owner must take to cure the findings. Activities to cure findings may include but are not limited to:

- Preparing additional procedural documents (Marketing and Management Plans, maintenance plans, complaint response policies, etc.) to ensure all City requirements are met and staff are adequately trained in administration of the BMR Program;
- Completing an additional annual report in a City-specified reporting format and allowing the City to conduct additional audits;
- Conducting tenant outreach to determine remediation efforts, if tenant complaints resulted in findings;
- Providing additional BMR Units as a good faith effort to show dedication to BMR Unit residents;
- Providing discounts to BMR Unit tenants who have been impacted by findings.

All findings letters will include a timeline for the development to complete required activities. Extensions will be approved at the discretion of City Staff. Penalties and fines may be imposed upon developments that fail to respond in a timely manner or that receive consistent findings.

6 Procedures for BMR Secondary Units

6.1 Definitions

Secondary Unit: A legal secondary dwelling unit on an owner's property that has been approved by the City of Dublin as a rental BMR Unit for purposes of compliance with the Ordinance and that is reserved for Very Low-, Low-, or Moderate-Income households. This definition only applies to secondary units developed under the City's affordable housing program and does not apply to all secondary units in the city.

Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants: An agreement between the City and the owner of a Secondary Unit which is recorded against the property containing the Secondary Unit and requires, among other things, that the Secondary Unit be reserved for occupancy by Very Low-, Low-, or Moderate-Income households for an amount of time specified in the Affordable Housing Agreement or Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants.

6.2 Overview

The City Council may approve BMR Secondary Units as part of the developer's proposal for an alternate method of compliance with the Inclusionary Zoning Regulations Ordinance.

The owner of a BMR Secondary Unit must sign a Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants and Performance Deed of Trust, which will be recorded against the property. The agreement and deed will remain in effect regardless of any sale, assignment, or transfer of the property, unless the agreement and deed are terminated by the City in writing. Failure or refusal to sign the required Agreements will result in a Notice of Default placed on the property.

6.3 Purchase Process

Buyers and sellers of homes that include a BMR Secondary Unit must coordinate with the City during the purchase and sale process (see **Figure 8** for an overview). Key steps are as follows:

1. **Initial Sale by Developer.** For the initial sale of homes with a restricted secondary unit, the developer must explain the rent restrictions associated with the secondary unit and provide potential buyers with a sample of the Secondary Unit Regulatory Agreement (see **Exhibit 6**). At least 30 days prior to the anticipated close of escrow, the developer must submit a completed contact sheet, a disclosure statement signed by the potential buyer, and a preliminary title report to the City. Failure to provide the City with the required buyer information could result in delayed building permits issued or administrative fees.

6. PROCEDURES FOR BMR SECONDARY UNITS

2. **Meeting with City's Housing Division.**

Potential buyers of homes with BMR secondary units must meet with City Staff to discuss the rental limitations and requirements associated with the BMR secondary units and review the *Secondary Unit Regulatory Agreement and Performance Deed of Trust*. At the meeting, buyers will review and sign a disclosure statement. For initial sales by the developer, the City will contact the potential buyer upon receipt of the contact sheet from the developer to arrange the meeting. For resales, real estate agents or potential buyers must contact City Staff directly to arrange the meeting.

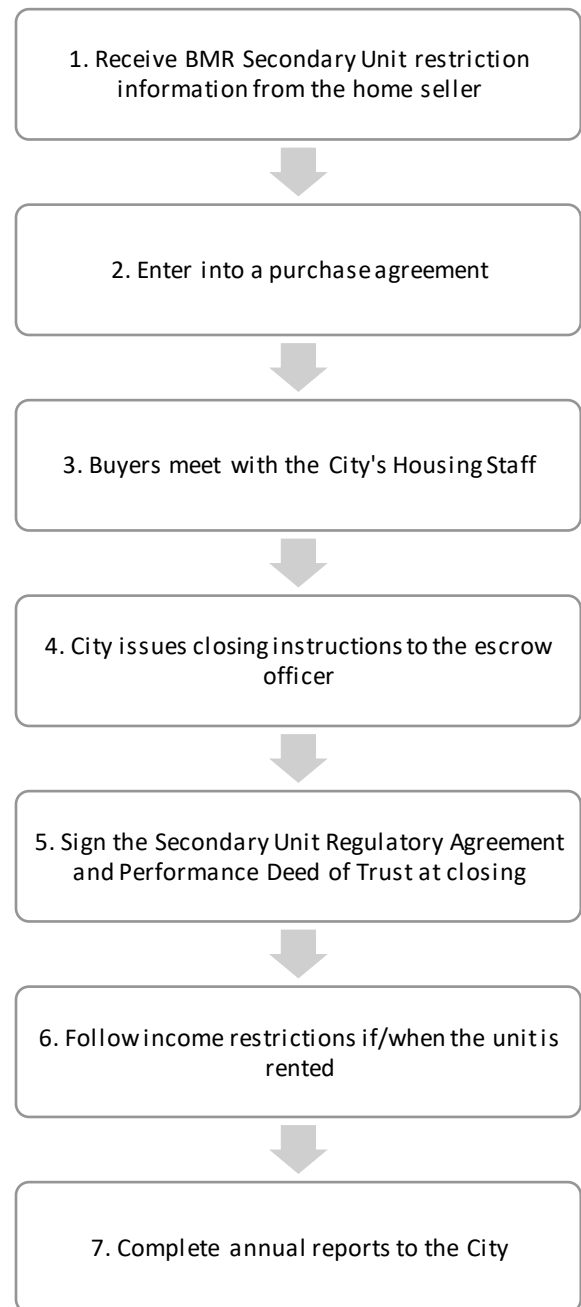
3. **Escrow Instructions.** Following the meeting with the potential buyers, the City will issue escrow instructions to the title officer who will facilitate the closing of the transaction. The instructions will clearly inform the title officer of documents the City will need to review prior to providing the Secondary Unit Regulatory Agreement and Performance Deed of Trust. The seller of the home that includes a BMR Secondary Unit is responsible for payment of the City's administrative fee to cover the cost of the transaction.

4. **Close of Escrow.** Following receipt and satisfactory review of all documents requested in the escrow instructions, the City will provide the Secondary Unit Regulatory Agreement and Performance Deed of Trust for execution at closing.

6.4 Rental Requirements for BMR Secondary Unit Owners

If the owner rents the BMR Secondary Unit, the owner shall rent the unit to a Qualified Household (see **Section 3**). Rental of the unit to a non-qualified tenant or use of the unit as a short-term rental will result in action taken by the City Attorney and may result in payment of legal fees and/or income received. The owner shall ensure that all leases and contracts with tenants prohibit subleasing of the BMR Secondary Unit. All leases or contracts must be a minimum of 30 days. The Owner must submit a copy of the annual lease agreement with BMR tenant to the City during annual reporting.

Figure 8.
BMR Secondary Unit Sale Procedure



6. PROCEDURES FOR BMR SECONDARY UNITS

6.5 Tenant Income Verification

Prior to a household's initial occupancy of a BMR Secondary Unit and annually on every anniversary of the originally closing date thereafter, the owner or its authorized agent shall obtain from the tenant written documentation verifying each tenant's eligibility containing all of the following, including additional documentation as the City may reasonably require:

- Number of people in the household; and
- Total Gross Household Income.

6.6 Annual Survey Requirements

The City will monitor the status of the occupancy of the BMR Secondary Unit on an annual basis. A survey will be emailed to the owner(s) of the home containing the BMR Secondary Unit, on the anniversary date of the home purchase (close of escrow). The owner will complete the online annual survey and provide a copy of their home owner's insurance policy in conformity with the requirements of Section 8.68.050.B of the Inclusionary Zoning Regulations Ordinance, together with a certification that the property is in compliance with the requirements of the Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants. The annual survey will, at a minimum, verify whether the BMR Secondary Unit is being rented, and if so, the owner is required to provide the City the following information:

1. The address of the BMR Secondary Unit;
2. The monthly rent charged and proposed to be charged;
3. The number of people residing in the unit; and
4. The Total Household Income of residents; and
5. A copy of the lease agreement.

Upon the City's request, the owner will provide the City a copy of the verifying documentation and such additional information as the City may reasonably request from time to time in order to show compliance with the Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants.

6.7 Management Responsibilities

The owner will be responsible for all management functions with respect to the property, including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Except as the City may otherwise agree in writing, the City will have no responsibility for management or maintenance of the property. The contracting of management services to a management entity does not relieve owner of its primary responsibility for proper performance of management duties.

6.8 Refinance Requirements

Owners of BMR Secondary Units must inform the City if they intend to refinance their home and are subject to an administrative fee for the City's review and preparation of the Subordination Agreement. The City and the owner will follow a procedure similar to that outlined in **Figure 4** and

6. PROCEDURES FOR BMR SECONDARY UNITS

described in **Section 4.6**, except that BMR Secondary Units are not subject to the same financing restrictions as BMR Units.

6.9 Resale Requirements

For a resale of the home with a Restricted Secondary Unit by the home's existing owner, the Seller of the home and/or their Real Estate Agent must notify the City prior to sale of home. The City shall ensure the MLS listing has the appropriate language and that the new buyer of the home follows the steps below. New buyer information must be provided to the City during escrow so that the City can ensure all Agreements are updated with the new information and so the buyer is aware of all program requirements. As outlined in the City Fee Schedule, Seller is responsible to pay the Resale Transaction Fee to the City at close of escrow. Failure to notify the City of sale and subsequent failure to transfer the Regulatory Agreement may result in further administrative or legal fees charged to the unit Seller.

7 Exceptions and Appeals

7.1 Overview

The City has policies in place for any applicant who believes that his/her situation warrants an exception or appeal to the Guidelines. The procedures for exceptions and appeals are outlined in this section.

7.2 Exception Requests

Any applicant believing that his/her situation warrants an exception to any part of these Guidelines due to circumstances outside of his/her household's control, such as refugee status, special needs, or other hardships or special circumstances, may request an exception by submitting a written letter to the City prior to submitting an application of any kind. The exceptions request procedure is outlined in **Figure 9**.

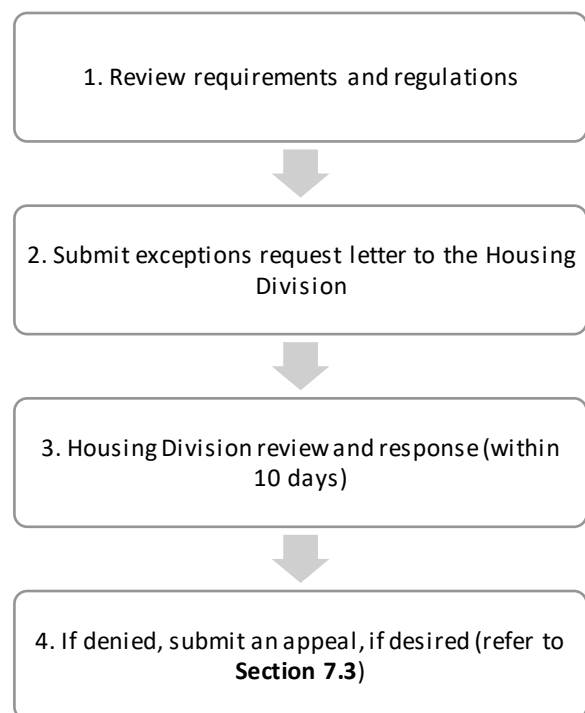
The exception request must specify which particular guideline or requirement the household cannot meet for reasons beyond their control or other valid reasons, and/or describe the household's unique circumstances which warrant one or more specific exceptions to be identified in the letter, referencing the page(s) and section(s) of these Guidelines and/or application form related to the request.

If the need for an exception arises while an application is being reviewed, a request may be submitted at such time. If the need for an exception arises only after receipt of a determination letter issued by City Staff, an exception request will be submitted as an appeal of such determination, according to the appeal process described in **Section 7.3**.

Exceptions related to disabilities (reasonable accommodations) may be requested according to this procedure, with a brief description of the exception(s) needed due to the applicant's disability. Such requests will be handled in accordance with the City's reasonable accommodations policy and these Guidelines.

The City will consider the requested exception and will provide a letter response within 10 calendar days, stating whether the requested exception can be granted in full or in part and the reason for such decision. If denied, applicants may submit an appeal, as explained in **Section 7.3**.

Figure 9.
Exception Request Procedure



7. EXCEPTIONS AND APPEALS

7.3 Appeals Procedure

Applicants may appeal any determination letter, including denial of a requested exception, by providing a written explanation of the reasons for their appeal, and any supporting evidence they wish to provide. The appeals procedure is outlined in **Figure 10**.

City Staff is not authorized to assist applicants in drafting appeal letters, nor in determining appropriate grounds for appeal or appropriate forms of supporting evidence, beyond advising them of the contents of these Guidelines, application forms, and other published program materials. Applicants may refer to these Guidelines and application forms and/or seek their own advisors/counsel for guidance in determining what types of documentation would be reasonable.

The appeal will be considered by the Community Development Director. The appeal letter must be delivered by mail, email, or personal delivery within 10 calendar days of issuance of the determination letter being appealed. The Community Development Director will review the appeal and make a determination within 10 calendar days.

If denied, the applicant may submit an appeal letter to the City Manager. The City Manager will review the appeal and issue a determination within 10 calendar days or less of receipt. Determinations by the City Manager will be considered final.

Unless the appellant opened escrow to purchase a BMR Unit prior to submittal of an appeal letter, no BMR Unit will be held or reserved for the applicant while an appeal is being considered, and offers from other prospective buyers may be accepted by seller(s) of BMR Unit(s) during this time. If the appellant is in escrow to purchase a BMR Unit, the City will not issue any escrow instructions until a final determination regarding the appeal has been made, other than to inform the escrow officer that he/she may not close until further written notice from the City.

The City is not responsible for any actions of the seller, lender, or other parties regarding the escrow during the appeal period which may jeopardize the buyer's ability to purchase the BMR Unit.

Figure 10.
Appeals Procedure

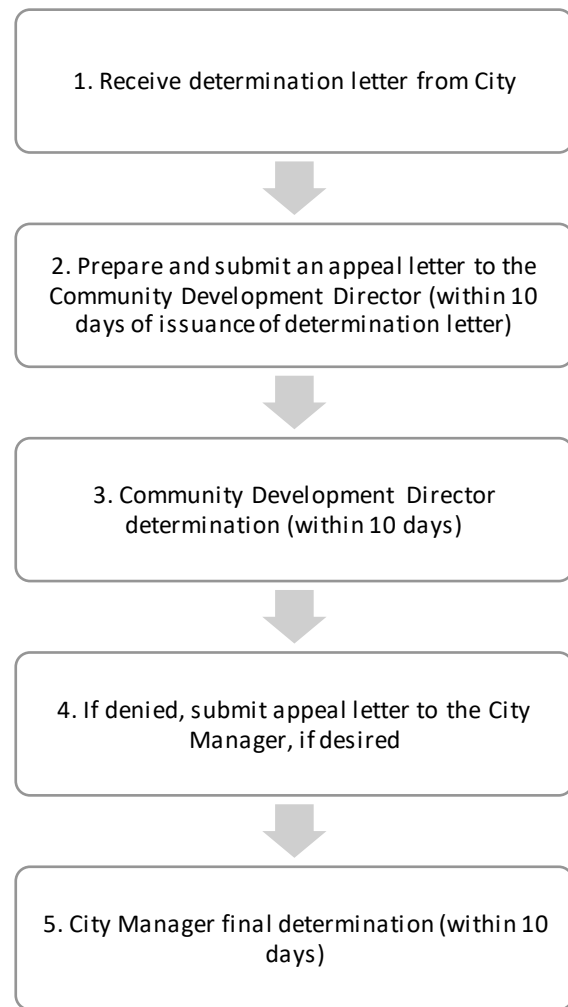


Exhibit 1. Resale restriction Agreement and Option to Purchase (sample)

EXHIBIT 1. Resale Restriction Agreement and Option to Purchase

Recording requested by and when
recorded mail to:

City of Dublin
100 Civic Plaza
Dublin, CA 94568
Attn: City Clerk

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(Space Above This Line For Recorder's Use Only)



**RESALE RESTRICTION AGREEMENT
AND OPTION TO PURCHASE**

City of Dublin Affordable Housing Program
(Inclusionary Units)

**NOTICE: THIS DOCUMENT CONTAINS RESTRICTIONS ON THE USE,
SALE AND REFINANCING OF THIS PROPERTY.**

This RESALE RESTRICTION AGREEMENT AND OPTION TO PURCHASE (this "Agreement") is entered into by and between the CITY OF DUBLIN, a California municipal corporation (the "City") and **Owner Name(s) as appears on title** ("Owner") regarding certain improved real property which is more particularly described in Exhibit A attached hereto and incorporated herein and commonly known as **Address, Dublin, CA 94568** (the "Property") effective as of **Date** (the "Effective Date"). City and Owner are hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, pursuant to its Inclusionary Zoning Regulations (Dublin Municipal Code Section 8.68), the City has established a program to further its goal of creating affordable home ownership opportunities for low- and moderate-income households by providing for the construction and sale of certain homes at a price below their market rate (the "Program");

WHEREAS, Owner qualifies as an Eligible Household under the Program and intends to occupy and maintain the Property as Owner's principal residence;

WHEREAS, to maintain and preserve the Property as housing affordable to eligible moderate-income purchasers, it is necessary to restrict the use and resale of the Property through imposition of the occupancy and resale restrictions set forth herein. These restrictions are intended to prevent uses of the Property for purposes that are incompatible with the Program, and to prevent unwarranted gains from sale of the Property at an unrestricted price. The Owner's obligations set forth in this Agreement as secured by the Performance Deed of Trust, and the Option granted to the City hereby, are intended to

EXHIBIT 1. Resale Restriction Agreement and Option to Purchase

provide the necessary occupancy and resale restrictions to ensure that the Property is used, maintained, and preserved as housing affordable to eligible low- and moderate-income purchasers;

WHEREAS, the Property constitutes a valuable community resource by providing decent, safe, and sanitary housing to persons and families of low- and moderate-income who would otherwise be unable to afford such housing. To protect and preserve this resource, it is necessary, proper, and in the public interest for the City to administer occupancy and resale controls consistent with the Program and applicable law by means of this Agreement;

WHEREAS, notwithstanding the foregoing, the City has provided a mechanism to allow for the release of the resale restrictions for Below Market Rate ("BMR") properties in the Program whose owners are unable to sell them under certain limited circumstances, at the sole discretion and approval of the City, pursuant to the City's adopted Guidelines to the Inclusionary Zoning Regulations Ordinance ("Guidelines"), at Section 6.5.2 ("Release of Resale Restrictions").

NOW THEREFORE, in consideration of the substantial economic benefits received by the Owner and the public purposes served under the Program, Owner and City agree as follows:

AGREEMENT

1. Definitions

As used in this Agreement, the following terms have the meanings set forth below. Other additional terms are defined as necessary throughout this Agreement.

"Adjusted Resale Price" means Base Resale Price as adjusted by the factors listed in Section 6.2, not to exceed Affordable Unit Cost.

"Affordable Unit Cost" means a sale price that will result in a homeowner's annual housing expenses not exceeding 35% of the maximum qualifying income level, adjusted for household size appropriate for the unit. For purposes of this definition, "housing expenses" means principal, interest, property taxes, property and mortgage insurance, and homeowners' association dues. "Maximum qualifying income level" means: (i) for Moderate-Income Households – 120% of Area Median Income; and (ii) for Low-Income Households – 80% of Area Median Income. "Household size appropriate for the unit" means one person for a studio, two persons for a one-bedroom unit, three persons for a two-bedroom unit, four persons for a three-bedroom unit, and five persons for a four-bedroom unit.

"Area Median Income" or **"AMI"** means the area median income adjusted for household size as published annually by the California Department of Housing and Community Development ("HCD") for the County of Alameda, pursuant to California Health and Safety Code Section 50093 or successor provision.

EXHIBIT 1. Resale Restriction Agreement and Option to Purchase

“Base Resale Price” means the unadjusted value of the Property as determined in Section 6.1.

“Eligible Capital Improvements” means any health and safety-related improvements to the Property as may be approved by the City in accordance with Section 3.5.

“Eligible Household” means a household whose gross annual income does not exceed the Low- or Moderate-Income limits of 80% and 120% AMI, respectively, and which otherwise meets the Program criteria.

“Event of Default” is any breach by Owner of the covenants and conditions of this Agreement as set forth in Section 11.1, or other event described herein, which gives rise to the City’s right to exercise the Option.

“Excess Sale Proceeds” means the Owner’s obligation to pay to the City the difference between the amount that Owner would have received from sale of the Property to an Eligible Household at the Adjusted Resale Price, and the amount received from sale of the Property to a Market Purchaser or in other circumstances as described in Section 6.3.

“Guidelines” means the City’s Guidelines to the Inclusionary Zoning Regulations Ordinance set forth in Chapter 8.68 of the City’s Municipal Code, as amended from time to time, which terms and provisions are made a part hereof and incorporated into this Agreement as if they were expressly set forth herein.

“Market Purchaser” means a household to whom the Property is sold in the event that Owner is unable to locate an Eligible Household, pursuant to the terms and conditions set forth in Section 5.8.

“Option” means the City’s right to purchase the Property at the Adjusted Resale Price upon the occurrence of an Option Event, in accordance with Section 4.

“Option Event” is any event, as identified in Section 4.3, which gives rise to the City’s right to exercise the Option.

“Permitted Exceptions” means any exceptions to title, liens or other encumbrances expressly permitted by the City to be recorded against the Property.

“Permitted Transfer”/“Permitted Transferee” shall mean an authorized conveyance or transfer of interest in the Property as specifically provided in Section 2.3, or the person(s) to whom the Property interest is conveyed, which shall not trigger exercise of the Option or be otherwise considered an Option Event.

“Principal Residence” means the place where a person resides on a substantially full-time basis during not less than ten (10) months per year.

“Resale Restrictions” means, collectively, the restrictions on sale price and transfer of the Property as set forth in this Agreement.

EXHIBIT 1. Resale Restriction Agreement and Option to Purchase

“Term of the Resale Restrictions and Option” means **55 years**, commencing upon the date the unit was placed into service as an inclusionary unit; i.e., the **original owner’s date of signing**, hereby understood by the Parties to be **[EFFECTIVE DATE OF ORIGINAL RRA FOR PROPERTY]**

“Transfer” means any sale, conveyance, assignment, or transfer of any interest in the Property, whether voluntary or involuntary.

2. Program Requirements

2.1 General Resale Restrictions. Owner hereby covenants and agrees that during the term of this Agreement, the Property shall be sold or transferred only to: (i) Eligible Households at a price not to exceed the Adjusted Resale Price, as described in Section 6.2; (ii) a Permitted Transferee pursuant to Section 2.3; (iii) the City, pursuant to exercise of the Option as described in Sections 4 and 5; or, (iv) in the event that Owner is unable to locate an Eligible Household, to a Market Purchaser as provided in Section 5.8 and other applicable provisions of this Agreement. Any sale or other transfer of the Property in violation of any Resale Restriction set forth herein is prohibited and shall constitute an Event of Default and/or an Option Event entitling City to exercise its Option to purchase the Property.

2.2 Principal Residence Requirement. Owner covenants and agrees to occupy the Property as Owner’s Principal Residence throughout the period of time that Owner owns the Property, and that Owner shall not rent or lease the Property or portion thereof during the Term of the Resale Restrictions and Option. Owner shall take possession of and occupy the Property within sixty (60) days of close of escrow for the Property. Owner shall be considered to occupy the Property as a Principal Residence if the Owner personally resides in the Property for at least ten (10) months out of each calendar year.

2.2.1 Annual Occupancy Certification. On at least an annual basis or as otherwise determined necessary by the City, Owner shall provide written certification, in form provided by City, that Owner occupies the Property as Owner’s Principal Residence and that Owner is not impermissibly renting or leasing the Property to another party. Owner shall provide such documents and other evidence as City may reasonably request to verify compliance with the requirements of this section.

2.2.2 Successor Owners. During the Term of the Resale Restrictions and Option, successor owners of the Property shall be obligated to use the Property as such successor’s Principal Residence for the duration of the successor’s ownership, except as otherwise provided in Section 5.8 with regard to a Market Purchaser. Abandonment of the Property by Owner or any successor shall constitute an Option Event triggering the City’s right to exercise the Option to purchase the Property.

2.3 Permitted Transfers. As provided under this section, transfers of title to the Property, or of any estate or interest therein, shall not be considered Option Events, provided that the transferee assumes, within 30 days following a written request by City, all of Owner’s duties and obligations under this Agreement pursuant to a written assumption agreement or execution of an agreement substantially similar to this Agreement, in form(s)

EXHIBIT 1. Resale Restriction Agreement and Option to Purchase

acceptable to the City. Notwithstanding any Permitted Transfer, the Option shall remain effective with respect to the Property for the duration of the Term of the Resale Restrictions and Option. Permitted Transfers shall include:

- (a) Transfer by devise or inheritance to Owner's spouse or domestic partner following the death of Owner;
- (b) Transfer by Owner to a spouse or domestic partner where the spouse or domestic partner becomes the co-owner of the Property;
- (c) Transfer of title to a spouse as part of a divorce or marriage dissolution proceeding; and
- (d) Transfer by Owner into an inter vivos trust in which the Owner is a beneficiary; provided, however, that in every case: (i) written notice of each such transfer shall be provided to City, and (ii) Owner shall continue to occupy the Property as his or her principal place of residence except where the transfer occurs pursuant to subsection (a) or (c) above, in which event the transferee shall owner-occupy the Property.

2.3.1 Domestic Partners. For purposes of this Agreement and requirements of the Program, "domestic partner" shall mean two unmarried people, at least eighteen (18) years of age, who have lived together continuously for at least one year and who are jointly responsible for basic living expenses incurred during their domestic partnership. Domestic partners may not be persons related to each other by blood or adoption such that their marriage would be barred in the state of California. The City shall consider an individual to be Owner's domestic partner, exclusively for purposes of the Program and this Agreement, upon Owner's presentation to the City of an affidavit or other acceptable evidence of the domestic partnership. No legal rights, obligations, or incidents of domestic partnership or marriage, as recognized under any local, state, or federal law, are granted, established, or implied by this Agreement or as a result of Owner's and Owner's household's participation in the Program.

2.3.2 Inheritance. In the event a Transfer occurs by devise or inheritance due to death of the Owner, the administrator of the Owner's estate or the person inheriting the Property shall provide written notice to the City of the Owner's death within thirty (30) days of the date of death, and the following procedures shall apply:

- (a) If the person inheriting the Property (the "Inheriting Owner") is the child or stepchild of the deceased Owner (an "Inheriting Child"), he or she shall provide the City with documentation that he or she is the child or stepchild of the deceased Owner together with income information, to be verified by the City, so that the City may determine if the Inheriting Child is an Eligible Household.
- (b) If the Inheriting Child fails to provide required documentation of his or her relationship to the Owner or financial information, he or she shall be deemed not to qualify as an Inheriting Child and/or Eligible Household, as applicable. If the Inheriting Child qualifies as an Eligible Household, he or she shall succeed to the

EXHIBIT 1. Resale Restriction Agreement and Option to Purchase

Owner's interest and obligations under this Agreement, the City Note, and the City Deed of Trust, and new documents shall be executed between the Inheriting Child and the City and recorded against the Property.

(c) If the Inheriting Child fails to qualify as an Eligible Household, he or she shall be required to Transfer the Property to an Eligible Household at a price not exceeding the Adjusted Resale Price, pursuant to the procedures set forth in this Agreement and the City may exercise its Option; provided however, the Inheriting Child may occupy the Property for up to twelve (12) months provided that the Inheriting Child remains in compliance with the requirements of this Agreement and the Deed of Trust.

(d) If the Inheriting Owner is not the child or stepchild of the deceased Owner, he or she shall Transfer the Property to an Eligible Household at a price not exceeding the Adjusted Resale Price, pursuant to the procedures set forth in this Agreement, and the City may exercise its Option. In this event, the Inheriting Owner shall provide the City with a Notice of Intent to Transfer within sixty (60) days of the date of death of the Owner.

(e) Failure of an Inheriting Owner to follow the procedures and provide the notices as required under this Section 2.3.2 shall constitute an Event of Default under this Agreement, and the City may then exercise any of the remedies set forth in this Agreement or available to the City under law or equity, including, without limitation, exercise of the Option.

2.3.3 Changes to Title. Notwithstanding any other provision of Section 2.3 and subsections thereto, Owner shall obtain City's written approval prior to making any changes to the title of the Property, including but not limited to, the addition or deletion of the names of any person to or from title to the Property.

3. Restrictions on Financing Secured by Property

3.1 Encumbrances. Other than this Agreement and related Performance Deed of Trust, Owner shall permit no mortgage, deed of trust or other security instrument to be recorded against the Property, excepting the following: (i) a fixed rate conventional mortgage with a term of up to 30 years, (ii) any California Housing Finance Agency ("CalHFA") product; (iii) other recordable documents such as the City may require under the Program, (iv) other loan products approved by City, and (v) encumbrances that are approved by the City as Permitted Exceptions. Owner hereby covenants and agrees to ensure that any permissible deed of trust or other agreement encumbering the property shall include provisions for notice of any default thereunder to be delivered to City and for City's right to cure such default at City's election.

3.2 Initial Financing. Owner's aggregate purchase money financing for the Property ("Initial Financing") shall not exceed an amount equal to one hundred percent (100%) of the Base Resale Price calculated as provided in Section 6.1.

3.3 Junior Loans. Mortgage loans or equity lines of credit junior in lien priority to the Performance Deed of Trust are not permitted, except when expressly approved by the

EXHIBIT 1. Resale Restriction Agreement and Option to Purchase

City in writing. The City shall only approve junior mortgage loans or equity lines of credit as follows:

(a) The loan or equity line of credit does not cause the Property's loan to value ratio (calculated by comparing the total debt secured by the Property to the Adjusted Resale Price of the Property) to exceed 100%.

(b) The proceeds of such loan or equity line of credit are used only for Eligible Capital Improvements; and

(c) The total outstanding balance of principal and any accrued interest on all loans secured by the Property does not exceed the Adjusted Resale Price.

3.4 Refinancing. Any prepayment and refinance of the Initial Financing shall not be permitted unless expressly approved by the City in writing, and the City may approve such refinancing only if all of the following conditions are met:

(a) the refinance reduces Owner's interest rate and monthly payments of principal and interest on the Initial Financing or shall be used to finance Eligible Capital Improvements;

(b) the refinance does not cause the principal amount of all debt secured by the Property to exceed the then outstanding balance (plus refinancing and closing costs) of the Initial Financing plus the cost of any Eligible Capital Improvements that shall be made by Owner;

(c) the refinance does not result in Owner receiving any cash from the refinance except for Eligible Capital Improvements;

(d) the refinance does not cause the Property's loan to value ratio (calculated by comparing the total debt secured by the Property to the Adjusted Resale Price) to exceed 100% if the Owner does not receive any cash from the refinance, or 97% if the Owner receives cash from the refinance for Eligible Capital Improvements; and,

(e) the total outstanding balance of principal and any accrued interest on all loans secured by the Property does not exceed the Adjusted Resale Price.

3.5 Financing of Eligible Capital Improvements. In the City's exercise of reasonable discretion in accordance with the Guidelines, the City will approve capital improvements to improve adverse health and safety conditions. Only such improvements as are approved by the City shall be deemed Eligible Capital Improvements. In the event that the Owner (i) refinances the Initial Financing in accordance with Section 3.4, or (ii) borrows a junior loan or takes an equity line of credit, in accordance with Section 3.3, for purposes of making Eligible Capital Improvements, Owner shall provide adequate documentation to City, in a form acceptable to City in its sole and absolute discretion, that any amount of funds received by Owner for such Eligible Capital Improvements shall be and are used exclusively for that purpose.

EXHIBIT 1. Resale Restriction Agreement and Option to Purchase

3.6 Preservation of Affordability; Subordination. The City and the Owner agree that the requirements of Section 3 and subsections hereto are necessary to ensure the continued affordability of the Property to Owner and to minimize the risk of loss of the Property by Owner through default and foreclosure of mortgage loans. Owner further acknowledges that violation of the provisions of this Section 3 shall constitute a Default under this Agreement. In no case shall this Agreement and the Performance Deed of Trust be in lower than third lien position on the Property. Any subordination agreement to be executed by City shall include notice and cure rights for City regarding any defaults in the mortgage to which the City is subordinating.

3.7 For purposes of this Section 3 and subsections hereto, the Adjusted Resale Price shall be calculated by the City pursuant to Section 6.2 of this Agreement as of the earlier of (i) the date on which the deed of trust or mortgage securing the new mortgage is filed for recordation in the Official Records of the County of Alameda, or (ii) the date the City receives a Notice of Intent to Transfer pursuant to Section 5.1.

4. City's Option to Purchase Property

4.1 Grant of Option to Purchase. Owner hereby grants to the City an Option to purchase the Property, subject only to Permitted Exceptions, at the Adjusted Resale Price, upon the occurrence of an Option Event in accordance with the terms and conditions contained herein.

4.2 Assignment of the Option. The City may assign the Option to another government entity, a non-profit affordable housing provider, or a person or family that qualifies as an Eligible Household. The City's assignment of the Option shall not extend any time limits contained herein with respect to the exercise period of the Option or the period within which the Property must be purchased.

4.3 Events Giving Rise to Right to Exercise Option. The City shall have the right to exercise its Option upon the occurrence of any of the following events (each, an "Option Event"):

- (a) Receipt of a Notice of Intent to Transfer (see Section 5.1, below);
- (b) Receipt of a Notice of Owner's Inability to Locate an Eligible Household as described in Section 5.8;
- (c) Any actual, attempted or pending sale, conveyance, transfer, lease or other attempted disposition of the Property or of any estate or interest therein, except as otherwise provided in Section 3;
- (d) Any actual, attempted or pending encumbrance of the Property, including without limitation by way of mortgage or deed of trust, or by judgment, mechanics, tax or other lien, except as provided in Section 3;
- (e) Recordation of a notice of default and/or notice of sale pursuant to California Civil Code Section 2924 (or successor provisions) under any deed of trust or mortgage with a power of sale encumbering the Property;

EXHIBIT 1. Resale Restriction Agreement and Option to Purchase

(f) Commencement of a judicial foreclosure proceeding regarding the Property;

(g) Execution by Owner of any deed in lieu of foreclosure transferring ownership of the Property, except as otherwise provided in Section 4.6.2;

(h) Commencement of a proceeding or action in bankruptcy, whether voluntary or involuntary, pursuant to Title 11 of the United States Code or other bankruptcy statute, or any other insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship, concerning the Owner; or

(i) The occurrence of an Event of Default as described in Section 11.

4.4 Right of Reinstatement. If the Option Event is the recordation of a notice of default, then the City shall be deemed to be Owner's successor in interest under California Civil Code Section 2924c (or successor section) solely for purposes of reinstatement of any mortgage on the Property that has led to the recordation of the notice of default. As Owner's deemed successor in interest, the City shall be entitled to pay all amounts of principal, interest, taxes, assessments, homeowners' association fees, insurance premiums, advances, costs, attorneys' fees and expenses required to cure the default. If the City exercises the Option, then any and all amounts paid by the City pursuant to this section shall be treated as Adjustments to the Base Resale Price for the Property, as described in Section 6.2 below.

4.5 Priority and Effectiveness of the Option

4.5.1 Recordation. This Agreement shall be recorded in the Office of the Recorder of the County of Alameda on or as soon as practicable after the Effective Date. Except as otherwise expressly provided in Section 5.8 of this Agreement, the Option shall have priority over any subsequent sale, conveyance, transfer, lease or other disposition or encumbrance of the Property, or of any estate or interest therein, and in the event of exercise of the Option by City, the City shall take the Property subject only to Permitted Exceptions. The exercise of the Option by the City at any time and from time to time shall not extinguish the Option or cause a merger of the Option into any estate or other interest in the Property, and the Option shall continue to exist and be effective with respect to the Property against any and all subsequent owners.

4.5.2 Request for Notice of Default. The City shall file a Request for Notice of Default for recordation in the Office of the Recorder of the County of Alameda promptly upon execution of this Agreement (see Exhibit E).

4.5.3 Subordination. The City agrees that in order to assist qualified purchasers to secure purchase money financing for the acquisition of the Property, the City will enter into a subordination agreement with a senior purchase money lender to subordinate this Agreement under such terms as the City and the senior purchase money lender shall negotiate.

4.6 Survival of Option Upon Transfer

4.6.1 In General. The City's right to exercise the Option shall survive any transfer of the Property by Owner, except as otherwise provided in Sections 4.6.2 and 5.8 of this Agreement. Each transferee, assignee or purchaser of the Property during the term hereof shall be required to execute an agreement substantially in the form of this Agreement, provided that the term of any such agreement shall be for the remainder of the term hereof as of the date of any such transfer, assignment or sale. The Option may be exercised against the Property throughout the term hereof, regardless of whether the Property is owned, possessed or occupied by Owner or any successor, transferee, assignee, heir, executor, or administrator of Owner, regardless of household income (if applicable) including a debtor-in-possession, debtor or trustee pursuant to Title 11 of the United States Code. Notwithstanding the foregoing, the Option shall not survive (i) the transfer of the Property to a third party purchaser pursuant to a judicial or non-judicial foreclosure or a deed-in-lieu of foreclosure under a power of sale contained in a mortgage or deed of trust held by an institutional lender, or (ii) the recording of an instrument conveying Owner's interest in the Property to the City, or its assignee, provided the conveyance is in accordance with the terms of this Agreement.

4.6.2 HUD-Insured and CalHFA Deeds of Trust. Notwithstanding any other provisions of this Agreement, if Owner has acquired the Property using financing secured by a deed of trust or mortgage insured by the Federal Housing Administration (FHA) or the U.S. Department of Housing and Urban Development (HUD), or provided through the California Housing Finance Agency (CalHFA), then the Option, together with all occupancy and resale restrictions contained herein and in the Performance Deed of Trust, as applicable, shall automatically terminate if title to the Property is acquired by HUD, CalHFA, or another party, upon foreclosure of a deed of trust insured by HUD, or upon execution of a deed in lieu of foreclosure of said deed of trust.

5. **Notice of Intent to Transfer; Exercise of Option; Consent to Transfer; Inability to Locate an Eligible Household**

5.1 Notice of Intent to Transfer. If Owner desires to sell, convey, lease, encumber (other than Permitted Exceptions pursuant to Section 3) or otherwise transfer the Property or any estate or interest therein (other than a Permitted Transfer pursuant to Section 2.3), Owner shall deliver written notice to City of such intent ("Notice of Intent to Transfer") by certified mail not less than 45 days prior to the date of such proposed sale, conveyance, transfer, lease, encumbrance or disposition. The Notice of Intent to Transfer shall be in substantially the form attached hereto as Exhibit B or such substitute form in use by City at such time. **Owner shall provide a Notice of Intent to Transfer to City prior to notifying real estate brokers or lenders of Owner's intent to transfer the Property and prior to listing of the Property on any multiple listing service.**

5.2 Notice of Exercise. Upon the occurrence of any Option Event, including receipt of a Notice of Intent to Transfer, the City may exercise its Option by delivering, within the time period specified in Section 5.4, notice to Owner of City's intent to exercise such Option pursuant to the terms of this Agreement ("Notice of Exercise"). The Notice of

EXHIBIT 1. Resale Restriction Agreement and Option to Purchase

Exercise may be in the form attached hereto as Exhibit C, or in such other form as the City may from time to time adopt. If the Option Event relates to the potential foreclosure of a deed of trust or mortgage, then the City shall also deliver the Notice of Exercise to the beneficiary or mortgagee under such mortgage, at such beneficiary's or mortgagee's address of record in the Office of the Recorder of Alameda County, and the City shall not complete the purchase of the Property if the default is cured within the time periods permitted by law.

5.3 Consent to Transfer. If the Option Event involves a Notice of Intent to Transfer the Property and the City does not exercise the Option, the City may consent to the transfer, provided that all of the following requirements are satisfied: (i) the Owner uses bona fide good faith efforts to sell the Property to an Eligible Household in compliance with this Section as well as the requirements outlined in the Guidelines for below market rate unit marketing requirements. This includes, but is not limited to, listing the Property on the multiple listing service, keeping the Property in an orderly condition, making the Property available to show to agents and prospective buyers, and providing prospective buyers with Eligible Household requirements, including income qualifications and the form of the Disclosure Statement attached hereto as Exhibit F; (ii) the prospective purchaser qualifies as an Eligible Household; (iii) the proposed sale price of the Property does not exceed the Adjusted Resale Price; (iv) the prospective purchaser executes a Disclosure Statement in the form attached hereto as Exhibit F or such other form or forms as may be promulgated by the City; (v) the prospective purchaser executes an agreement substantially similar to this Agreement in a form approved by the City and such substitute agreement is recorded in the Official Records of Alameda County concurrently with the close of escrow for the sale of the Property (provided, however, that the Term of the Resale Restrictions and the Option will be for that portion of such term remaining as of the date of close of escrow for the sale of the Property to the prospective purchaser); and (vi) the prospective purchaser executes a Performance Deed of Trust in form provided by City and such Performance Deed of Trust is recorded concurrently with the close of escrow for the sale of the Property. The Performance Deed of Trust, attached hereto as Exhibit G, will secure the performance of the resale, refinancing, and occupancy restrictions set forth herein, the other obligations of the Property owner, and the obligation for payment of the City's Equity Share in connection with the first sale of the Property following the expiration of the Term of the Resale Restrictions and Option.

5.3.1 In the case of a proposed sale of the Property to an identified prospective purchaser, the Owner shall submit to the City, together with the Notice of Intent to Transfer, a copy of the following documents:

- (a) prospective purchaser's income certification and a list of all assets owned by the prospective purchaser, and other financial information reasonably requested by City, in a form approved by the City;
- (b) the income certification to be provided to any lender making a loan to the prospective purchaser; and
- (c) a copy of the proposed sales contract and all documents setting forth the terms of sale, the name of the title company and escrow information.

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The City or its authorized designee may require the prospective purchaser to provide documentation evidencing and supporting the income and other financial information contained in the certifications.

5.3.2 Payment of Commissions. In any sale or transfer of the Property as provided herein, Owner shall pay real estate agent commissions, if any, which shall not exceed six percent (6%) of the actual sales price.

5.3.3 Expiration of Consent. If the prospective purchaser fails to qualify as an Eligible Household or fails to execute and deliver any of the required documents specified above within the time period set forth in the Consent to Transfer, then the Consent to Transfer shall expire and the City may, at its discretion, either: (i) notify Owner of the disqualification, thereby entitling Owner to locate another purchaser who qualifies as Eligible Household; or, (ii) City may exercise the Option, as if no Consent to Transfer had been delivered.

5.4 Time Periods for Notice of Exercise or Consent to Transfer. Except as provided in Section 5.8 (Notice of Inability to Locate Eligible Household), to which the time periods set forth in this section shall not apply, or as otherwise specified below, the City shall deliver either a Notice of Exercise or a Consent to Transfer, as applicable, not later than thirty (30) days after the date that it receives a Notice of Intent to Transfer or other notice of an Option Event.

5.4.1 Computation of Time. For purposes of computing time under this section, the City shall be deemed to have received notice of an Option Event on the date of delivery of a Notice of Intent to Transfer, or on the date it actually receives a notice of default, trustee's sale, summons and complaint, or other pleading, or other writing specifically stating that an Option Event has occurred. The applicable time period for exercise of the Option shall not commence to run, and the City shall have no obligation to deliver a Notice of Exercise or Consent to Transfer, unless and until the City has received notification of an Option Event in accordance with the notice provisions in Section 5 of this Agreement.

5.4.2 Notice of Default, Trustee's Sale, Judicial Foreclosure, or Deed in Lieu of Foreclosure. Upon occurrence of an Option Event as described in Section 4.3 (e), (f), or (g), the City shall deliver the Notice of Exercise on or before sixty (60) days after the date that the City receives notice of the Option Event, and the City or its assignee shall close escrow for the purchase of the Property no later than 90 days after the date the City receives notification of such Option Event, unless extended by mutual agreement of Owner and the City. If title to the Property has transferred to or been acquired by HUD or CalHFA as provided in Section 4.6.2 of this Agreement, due to foreclosure of a deed of trust or execution of a deed in lieu of foreclosure, the City's Option shall terminate as of the date of such transfer.

5.4.3 Notice of Exercise After Expiration of Consent to Transfer. If a Consent to Transfer has expired as provided above in Section 5.3.2, the City's Notice of Exercise, if applicable, must be delivered no later than fifteen (15) days after the expiration of the Consent to Transfer.

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5.4.4 Effect of Court Injunction or Order. If there is a stay or injunction imposed by court order precluding the City from delivering its Consent to Transfer or Notice of Exercise within the applicable time period, then the running of such period shall cease until such time as the stay is lifted or the injunction is dissolved and the City has been given written notice thereof, at which time the period for delivery of a Consent to Transfer or Notice of Exercise shall again begin to run.

5.5 No Deemed or Implied Consent; No Waiver. If the City in its sole discretion determines not to exercise the Option in any particular instance, or fails to deliver a Notice of Exercise or Consent to Transfer within the time periods set forth in Section 5.4 above, such determination or failure shall not affect City's rights to exercise the Option upon the occurrence of any future Option Event. Failure to deliver a Consent to Transfer strictly within the time provided shall not constitute deemed or implied consent by the City.

5.6 Inspection of Property. After receiving a Notice of Intent to Transfer or delivering a Notice of Exercise, the City shall be entitled to inspect the Property one or more times prior to the close of escrow to determine the amount of any Adjustments to the Base Resale Price. Before inspecting the Property, the City shall give Owner not less than forty-eight (48) hours written notice of the date, time and expected duration of the inspection. The inspection shall be conducted between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding court holidays, unless the parties mutually agree in writing to another date and time. Owner shall make the Property available for inspection on the date and at the time specified in the City's request for inspection.

5.7 Exercise of Option and Escrow

5.7.1 Timing of Escrow. Promptly after delivering a Notice of Exercise, the City shall open an escrow with a title company of City's choosing. Close of escrow shall take place on the later of the following dates: (i) sixty (60) days after a Notice of Exercise has been delivered; or, (ii) ten (10) days after Owner has performed all acts and executed all documents required for close of escrow; provided, however, that if the City exercises the Option upon the occurrence of an Option Event described in Section 4.3 (e), (f) or (g), close of escrow shall take place no later than 90 days after the date the City receives notification of such Option Event. Prior to the close of escrow, the City shall deposit into escrow the Adjusted Resale Price and all escrow fees and closing costs to be paid by City. Commissions (not to exceed 6% of the actual sales price), costs and title insurance premiums shall be paid pursuant to the custom and practice in the County of Alameda at the time of the opening of escrow, or as may otherwise be provided by mutual agreement. Owner agrees to perform all acts and execute all documents reasonably necessary to effectuate the close of escrow and transfer of the Property to the City.

5.7.2 Removal of Exceptions to Title, Escrow Proceeds. Prior to close of escrow, Owner shall cause the removal of all exceptions to title to the Property that were recorded after the Effective Date, with the exception of: (i) non-delinquent taxes for the fiscal year in which the escrow closes, which taxes shall be prorated as between Owner and City as of the date of close of escrow; (ii) quasi-public utility, public alley, public street easements, sidewalks, and rights of way of record; and (iii) such other liens, encumbrances, reservations and restrictions as may be approved

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in writing by City ("Permitted Exceptions"). The purchase price deposited into escrow by the City shall be applied first to the payoff of the Permitted Exceptions recorded against the Property in order of lien priority, and thereafter to the payment of Owner's share of escrow fees and closing costs. Any amounts remaining after the purchase price has been so applied, if any, shall be paid to Owner upon the close of escrow. If the purchase price is insufficient to satisfy all liens and encumbrances recorded against the Property, the Owner shall deposit into escrow such additional sums as may be required to remove such liens and encumbrances. In the event that the City agrees to proceed with close of escrow prior to the date that Owner has caused all exceptions to title other than Permitted Exceptions to be removed, then Owner shall indemnify, defend and hold City harmless from any and all costs expenses or liabilities (including attorneys' fees) incurred or suffered by City that relate to such exceptions and their removal from title to the Property.

5.8 Notice of Inability to Locate Eligible Household. If, despite bona fide good faith documented marketing efforts (as defined in the Guidelines at section 6.4.2), Owner is unable to locate an Eligible Household during the marketing period and any extensions to the marketing period granted by the City, the Owner shall provide written notice to the City of this fact in the form shown in Exhibit H attached to this Agreement (the "Owner's Notice of Inability to Locate Eligible Household") along with other documentation as required by City. Such documentation shall be required to be reviewed and approved by City to demonstrate Owner's eligibility under the policy set forth in the Guidelines allowing the release of resale restrictions for Below Market Rate ownership homes whose owners are unable to sell them under certain circumstances with City approval (the "Resale Restriction Release Policy"). Within fifteen (15) days of receipt of the Owner's Notice of Inability to Locate Eligible Household and other required documentation, and upon a determination that Owner complies with the requirements of the Resale Restriction Release Policy, the City shall provide written notice to Owner stating either (i) that the City will exercise the Option to purchase the Property, or (ii) that the Owner may transfer the Property to a Market Purchaser of the Owner's choosing who is not an Eligible Household, at an unrestricted price which is at or near fair market value (supported by a qualified appraisal), without taking into account the resale price restrictions imposed by this Agreement, and that the Owner shall pay any Excess Sales Proceeds to the City as set forth in Section 6.3 below.

5.8.1 Extended Time for Close of Escrow. If the City chooses to exercise its Option in response to the Owner's Notice of Inability to Locate Eligible Household, then the Option shall be exercised pursuant to the provisions of Section 5.7, except that close of escrow shall take place no later than seventy-five (75) days after the date of the City's written notification to Owner indicating City's exercise of its Option.

5.8.2 Conditions for Release and Reconveyance. If the Owner transfers the Property to a Market Purchaser, the purchaser shall not be required to execute a resale agreement, and the City shall reconvey the liens of this Agreement and the Performance Deed of Trust, provided that the Owner pays the Excess Sales Proceeds to the City pursuant to Section 6.3 below. The Owner shall provide the City with the following documentation associated with such a transfer:

(a) The name, address, email, and phone contact information of the purchaser;

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(b) The final sales contract and all other related documents which shall set forth all the terms of the sale of the Property, including the Closing Disclosure. Said documents shall include at least the following terms: (a) the sales price; and (b) the price to be paid by the Market Purchaser for the Owner's personal property, if any, for the services of the Owner, if any, and any credits, allowances or other consideration, if any.

(c) A written certification, from the Owner and the Market Purchaser in the form shown in Exhibit I, "Certification Upon Transfer of Property to Market Purchaser," that the sale shall be closed in accordance with the terms of the sales contract and other documents submitted to and approved by the City. The certification shall also provide that the Market Purchaser or any other party has not paid and will not pay to the Owner, and the Owner has not received and will not receive from the Market Purchaser or any other party, money or other consideration, including personal property, in addition to what is set forth in the sales contract and documents submitted to the City. The written certification shall also include a provision that in the event a Transfer is made in violation of the terms of this Agreement or false or misleading statements are made in any documents or certification submitted to the City, the City shall have the right to pursue any remedies at law or in equity such as may be appropriate. In any event, any costs, liabilities or obligations incurred by the Owner and the Market Purchaser for the return of any moneys paid or received in violation of this Agreement or for any costs and legal expenses, shall be borne by the Owner and/or the Market Purchaser and they shall hold the City and its designee harmless and reimburse their expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of this Agreement.

(d) A copy of the qualified appraisal for the Property.

(e) Upon the close of the proposed sale, a copy of the final sales contract, the Closing Disclosure, escrow instructions, and any other documents which the City may reasonably request.

6. Resale Pricing Requirements and Excess Sale Proceeds

6.1 Base Resale Price. Prior to adjustment pursuant to Section 6.2, the Base Resale Price of the Property shall be the lesser of:

(a) Indexed Value. The Indexed Value of the Property means the original price paid by the Owner for acquisition of the Property, which the Parties agree is the sum of sale amount written 00/100 Dollars (\$000,000.00) (the "Base Price"), increased (but not decreased) by an amount, if any, equal to the Base Price multiplied by the percentage increase in the Area Median Income between the Effective Date and the date that the City receives notification of an Option Event.

(b) Fair Market Value. The Fair Market Value of the Property means the value of the Property as determined by a qualified appraiser, certified by the State of California, selected and paid for by Owner and approved in writing by the City.

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Nothing in this section shall preclude the Owner and the City from establishing the Fair Market Value by mutual agreement instead of by appraisal.

To compute the Base Resale Price, the City may use the "Inclusionary Zoning Base Resale Price Worksheet" attached as Exhibit D hereto, or such other form as the City may from time to time adopt.

6.2 Adjustments to Base Resale Price. Subject to the Affordable Unit Cost restriction described in subsection (d) below, the Base Resale Price shall be increased or decreased, as applicable, by the following adjustment factors:

(a) Capital Improvements. An increase for Eligible Capital Improvements made to the Property, but only if the amount of such improvements has been previously approved in writing by the City after Owner has submitted original written documentation of the cost to the City for verification. The amount of the Adjustment shall equal the original cost of any such Eligible Capital Improvements.

(b) Damage. A decrease by the amount necessary to repair damage to the Property, if any, and to place the Property into saleable condition as reasonably determined by the City upon City's exercise of its Option hereunder, including, without limitation, amounts attributed to cleaning; painting; replacing worn carpeting and draperies; making necessary structural, mechanical, electrical and plumbing repairs; and repairing or replacing built-in appliances and fixtures. Owner covenants, at Owner's expense, to maintain the Property in the same condition as in existence on the date of City's Notice of Exercise, reasonable wear and tear excepted.

(c) Advances by the City. A decrease in an amount equal to the sum of all costs advanced by the City for the payment of mortgages, taxes, assessments, insurance premiums, homeowner's association fees and/or associated late fees, costs, penalties, interest, attorneys' fees, pest inspections, resale inspections, fixing violations of applicable building, plumbing, electric, fire, or other codes, and other expenses related to the Property, which Owner has failed to pay or has permitted to become delinquent.

(d) Adjusted Resale Price Not to Exceed Affordable Unit Cost. The Base Resale Price, as adjusted by the factors set forth in this Section 6.2, is herein referred to as the "Adjusted Resale Price." Notwithstanding any other provisions of this Agreement, in no event shall the Adjusted Resale Price exceed the Affordable Unit Cost.

6.3 Payment of Excess Sale Proceeds. If the City chooses not to exercise the Option in the event of any transfer other than to an Eligible Transferee as provided herein, the City shall be entitled to receive a portion of the proceeds from sale of the Property as follows:

6.3.1. Upon Sale in Violation of Agreement. If Owner sells or otherwise transfers the Property in violation of the price restrictions set forth herein, and if City chooses not to exercise its Option, then City shall be entitled to receive from Owner

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without any deduction, offset or recoupment, one hundred percent (100%) of the difference between the actual sales price net of reasonable and customary real estate commissions paid (such commissions not to exceed six percent (6%) of the actual sales price), and the Adjusted Resale Price (the "Excess Sale Proceeds"). For purposes of this section, the Adjusted Resale Price shall be calculated as of the earlier of: (i) the date of close of escrow for the sale of the Property to the third party, or (ii) the date the City receives Notice of Intent to Transfer pursuant to Section 5.1. This amount of any Excess Sale Proceeds shall be a debt of Owner to City and shall be secured by the Performance Deed of Trust.

6.3.2. Upon Foreclosure. If the Property is sold at a foreclosure sale and the proceeds of such sale are distributed to Owner, any surplus of proceeds remaining after payment of the senior liens and encumbrances on the Property shall be distributed as follows: that portion of the surplus up to, but not to exceed, the net amount Owner would have received pursuant to Section 5.7.2 had the City exercised its Option on the date of such sale shall be distributed to Owner, and the balance of such surplus, if any, shall be distributed to the City.

6.3.3. Upon Approved Transfer of Property to Market Purchaser. If the Owner transfers the Property at an unrestricted price pursuant to Section 5.8 above, then City shall be entitled to receive from Owner one hundred percent (100%) of the difference between the gross sales proceeds received by the Owner from the new Market Purchaser and the Adjusted Resale Price for the Property (in the amount that was stated in the City Notice of Consent to Transfer), less the differential between the reasonable and customary real estate commissions paid (such commissions not to exceed six percent (6%) of the actual sales price) versus the commission that would have been paid at the Adjusted Resale Price, and less the differential between the applicable transfer taxes owed based on the actual sales price versus what would have been paid based on the Adjusted Resale Price.

Example: The Adjusted Resale Price for the BMR Unit is \$300,000, but the BMR Unit is sold for \$400,000 at an unrestricted price. For the unrestricted price, the reasonable and customary real estate commission is \$24,000 and the transfer tax would be estimated at \$440. For the Adjusted Resale Price, the real estate commission would be \$18,000 and the transfer tax would be \$330. Thus the Owner would owe the City Excess Sale Proceeds based upon \$100,000 (the sales price differential) less \$6,000 (the real estate commission differential) less \$110 (the transfer tax differential), or \$93,890.

Above calculation expressed as a formula:

$$(\text{Price}_1 - \text{Price}_2) - (\text{Commission}_1 - \text{Commission}_2) - (\text{Tax}_1 - \text{Tax}_2) = \text{Excess Sale Proceeds}$$

6.3.4 Owner Acknowledgment of Obligation. The Excess Sales Proceeds amount, if any, shall be a debt of Owner to City and shall be secured by the Performance Deed of Trust. By entering into this Agreement, Owner acknowledges that City shall have no obligation to reconvey the Performance Deed of Trust or this Agreement unless and until the Excess Sale Proceeds are paid to City. City shall

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use the Excess Sale Proceeds for affordable housing programs. Owner further acknowledges that the formula used to determine the amount of the Excess Sale Proceeds is intended to cause Owner to receive the same or less net sale proceeds from the unrestricted sale of the Property as Owner would have received if the Property had been sold to an Eligible Household at the Adjusted Resale Price.

6.4 Appreciation Share Payable After Expiration of Restrictions and Option.

Unless otherwise released in accordance with the requirements of these restrictions set forth in this Agreement and the Option shall remain in effect for a period of **thirty (30)/fifty-five (55) years commencing on the Effective Date**. Notwithstanding the expiration of such conditions at the end of such term, upon the first transfer of the Property occurring after the expiration of the Term of the Resale Restrictions and Option, Owner (or Owner's successor in interest) shall pay to City an amount (the "City's Appreciation Share") equal to twenty-five percent (25%) of the difference between (a) the actual sales price net of reasonable and customary real estate commissions paid (such commissions not to exceed six percent (6%) of the actual sales price), and (b) the Adjusted Resale Price as determined for the date of the expiration of the Term of the Resale Restrictions and Option. The City's Appreciation Share shall be paid to the City concurrently with close of escrow for the sale of the Property, or upon Owner's receipt of the sale proceeds, whichever shall first occur. The requirement to pay the City's Appreciation Share shall survive the expiration of the Term of the Resale Restrictions and Option. Following completion of a sale and payment of the City's Appreciation Share in compliance with this section, this Agreement shall terminate, and City shall release and reconvey the Performance Deed of Trust securing this Agreement.

7. **Covenants Running with the Land**

7.1 The Parties hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall be effective as of the date of execution by the original Owner and the City, and that these covenants and restrictions shall be covenants running with the land, which shall pass to and be binding upon all parties having any interest in the Property throughout the Term of the Resale Restrictions and Option. Each and every contract, deed, lease or other instrument covering, conveying or otherwise transferring the Property or any interest therein, as the case may be, shall conclusively be held to have been executed, delivered and accepted subject to this Agreement regardless of whether the other party or parties to such contract have actual knowledge of this Agreement.

7.2 The Owner and the City hereby declare their further understanding and intent that: (i) the covenants and restrictions contained in this Agreement shall be construed as covenants running with the land pursuant to California Civil Code Section 1468 and not as conditions which might result in forfeiture of title by Owner; (ii) the burden of the covenants and restrictions set forth in this Agreement touch and concern the Property in that the Owner's legal interest in the Property may be rendered less valuable thereby; and (iii) the benefit of the covenants and restrictions set forth in this Agreement touch and concern the land by enhancing and increasing the enjoyment and use of the Property by Eligible Households who may purchase the Property, the intended beneficiaries of such covenants and restrictions.

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7.3 All covenants and restrictions contained herein without regard to technical classification or designation shall be binding upon Owner for the benefit of the City and such covenants and restrictions shall run in favor of such parties for the entire period during which such covenants and restrictions shall be in force and effect, without regard to whether the City is an owner of any land or interest therein to which such covenants and restrictions relate.

8. Owner's Acknowledgment of Resale Restrictions

Owner hereby acknowledges and agrees as follows:

(a) Absent the provisions of the Program and the provisions of this Agreement, the Property could not be made available to Eligible Households, including Owner, at an affordable price.

(b) For valuable consideration, Owner hereby subjects the Property to certain restrictions as provided herein; including, in part, limitations on the price for which Owner may sell the Property and persons to whom Owner may sell the Property. The resale price limitations and other provisions of this Agreement may restrict some benefits of owning the Property. Owner may not realize certain economic or other benefits from ownership of the Property that could arise from ownership of real property not otherwise subject to the restrictions of this Agreement.

(c) Owner has read and understands all of the provisions of this Agreement. Owner accepts and agrees to the provisions of this Agreement and understands that this Agreement (including without limitation the effectiveness of the Resale Restrictions and the City's Option) will remain in full force in perpetuity despite any Transfer of the Property, unless and except as otherwise provided in this Agreement.

(d) OWNER UNDERSTANDS THAT THE DETERMINATION OF THE MAXIMUM AFFORDABLE RESALE PRICE OF THE PROPERTY TO AN ELIGIBLE HOUSEHOLD CAN BE MADE ONLY AT THE TIME OF THE PROPOSED TRANSFER, TAKING INTO CONSIDERATION INCREASES IN MEDIAN INCOME, MORTGAGE INTEREST RATES, PROPERTY TAXES AND OTHER FACTORS THAT CANNOT BE ACCURATELY PREDICTED AND THAT THE SALES PRICE PERMITTED HEREUNDER MAY NOT INCREASE OR DECREASE IN THE SAME MANNER AS OTHER SIMILAR REAL PROPERTY WHICH IS NOT ENCUMBERED BY THIS AGREEMENT. OWNER FURTHER ACKNOWLEDGES THAT AT ALL TIMES IN SETTING THE SALES PRICE OF THE PROPERTY THE PRIMARY OBJECTIVE OF THE CITY AND THIS AGREEMENT IS TO PROVIDE HOUSING TO ELIGIBLE HOUSEHOLDS AT AFFORDABLE HOUSING COST. THE MAXIMUM RESTRICTED RESALE PRICE WILL ALMOST CERTAINLY BE LESS THAN OTHER SIMILAR PROPERTIES THAT HAVE NO RESTRICTIONS.

Initialed by Owner(s): _____

(e) DURING THE TERM OF THIS AGREEMENT OWNER SHALL NOT VOLUNTARILY SELL, ENCUMBER OR OTHERWISE TRANSFER THE PROPERTY

WITHOUT EXPRESS WRITTEN APPROVAL BY THE CITY OF SAID ENCUMBRANCE, TRANSFER OR SALE AND THE TERMS AND CONDITIONS THEREOF PERTAINING TO PURPOSE OF ENCUMBRANCE, ELIGIBLE HOUSEHOLD(S), SALE PRICE, EXCESS SALE PROCEEDS, OR OTHER REQUIREMENTS IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT. ANY ACTUAL OR ATTEMPTED SALE OR OTHER TRANSFER OF THE PROPERTY IN VIOLATION OF THIS COVENANT SHALL BE VOIDABLE BY THE CITY TO THE EXTENT PERMITTED BY LAW AND SHALL ENTITLE THE CITY TO EXERCISE ITS OPTION TO PURCHASE THE PROPERTY.

Initialed by Owner(s): _____

9. Limits on Liability

In no event shall the City become liable or obligated in any manner to Owner by reason of the assignment of this Agreement or the Option, nor shall City be in any way liable or obligated to Owner for any failure of the City's assignee to consummate a purchase of the Property or to comply with the terms of this Agreement or the Option, or any escrow instructions or agreement for the purchase of the Property.

10. Insurance Proceeds and Condemnation Award.

In the event the Property is destroyed and insurance proceeds are distributed to Owner instead of being used to rebuild the Property, or, in the event of condemnation, if the proceeds thereof are distributed to Owner, any surplus of proceeds remaining after payment of the senior liens and encumbrances on the Property shall be distributed as follows: that portion of the surplus up to, but not to exceed, the net amount Owner would have received pursuant to Section 5.7 had the City exercised its Option on the date of the destruction or condemnation valuation date shall be distributed to Owner; the balance of such surplus, if any, shall be distributed to the City.

11. Default and Remedies

11.1 Events of Default. The following shall constitute the occurrence of an Event of Default hereunder, and shall entitle City to exercise the Option or to pursue any other remedy provided herein or at law or in equity:

(a) Owner's failure to use the Property as Owner's principal residence.

(b) The sale, conveyance, or other transfer of the Property (including a foreclosure sale) if the remaining ownership interest of the Owner in the Property is less than fifty percent (50%), except for a Permitted Transfer as provided in Section 2.3.

EXHIBIT 1. Resale Restriction Agreement and Option to Purchase

(c) A default occurs under the terms of a deed of trust secured by the Property and such default is not cured prior to the expiration of any applicable cure period.

(d) Owner encumbers the Property in violation of this Agreement.

(e) Owner fails to observe or perform any other covenant, condition, or agreement to be observed or performed by Owner pursuant to this Agreement, and such breach remains uncured beyond the expiration of any applicable cure period.

11.2 Specific Performance. Owner acknowledges that any breach in the performance of its obligations under this Agreement shall cause irreparable harm to the City. Owner agrees that the City is entitled to equitable relief in the form of specific performance upon its exercise of the Option, and that an award of damages shall not be adequate to compensate the City for Owner's failure to perform according to the terms of this Agreement.

11.3 Other Remedies. City shall have all of the remedies provided for at law or equity, all of which shall be cumulative.

12. Notices

Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Paragraph. All such notices shall be sent by:

- (a) personal delivery, in which case notice shall be deemed delivered upon receipt;
- (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;
- (c) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or
- (d) facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof.

City: City of Dublin
Attn: City Clerk
100 Civic Plaza
Dublin, California 94568
Fax (925) 833-6651
HousingInfo@dublin.ca.gov

EXHIBIT 1. Resale Restriction Agreement and Option to Purchase

Owner: **Owner**
Address
Dublin, CA 94568

13. General Provisions

13.1 Attorneys' Fees. If either party initiates legal proceedings to interpret or enforce its rights under this Agreement, the prevailing party in such action shall be entitled to an award of reasonable attorneys' fees and costs in additions to any other recovery to which it is entitled under this Agreement.

13.2 No Joint Venture; No Third-Party Beneficiary. No joint venture or other partnership exists or is created between the Parties by virtue of this Agreement. Except as expressly stated herein, this Agreement does not benefit any third party.

13.3 Successors; Assignment. This Agreement shall inure to the benefit of and shall be binding upon the Parties to this Agreement and their respective heirs, executors, administrators, successors and assigns. City shall have the right to assign all of its rights and obligations under this Agreement without the consent of Owner.

13.4 Entire Agreement; Amendment. This Agreement, together with the Performance Deed of Trust, constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior negotiations, correspondence, understandings and agreements with respect thereto. There are no representations, promises, agreements or other understandings between the Parties relating to the subject matter of this Agreement that are not expressed herein. This Agreement may be modified only by an instrument in writing executed by the Parties or their respective successors in interest.

13.5 Survival; No Merger. All of the terms, provisions, representations, warranties and covenants of the Parties under this Agreement shall survive the close of escrow of any sale of the Property and shall not be merged in any deed transferring the Property.

13.6 Authority And Execution. Each Party represents and warrants that it has full power and authority to enter into this Agreement and to undertake all of its obligations hereunder, that each person executing this Agreement on its behalf is duly and validly authorized to do so.

13.7 Severability. The invalidity or unenforceability of any term or provision of this Agreement shall not impair or affect the remainder of this Agreement, and the remaining terms and provisions hereof shall not be invalidated but shall remain in full force and effect.

13.8 Waiver; Modification. No waiver or modification of this Agreement or any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the Party to be charged therewith. No evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the Parties arising out of or affecting this Agreement or the rights or obligations of any Party hereunder, unless such waiver or modification is in writing and duly executed as aforesaid. The provisions of this section may not be waived except as herein set forth. A waiver or

EXHIBIT 1. Resale Restriction Agreement and Option to Purchase

breach of any covenant, condition or provision of this Agreement shall not be deemed a waiver of any other covenant, condition or provision hereof.

13.9 Construction. The section headings and captions used in this Agreement are for convenience of reference only and shall not modify, define, limit or amplify any of the terms or provisions hereof. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties have prepared it.

13.10 Governing Law. This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of California.

13.11 Time of the Essence. Time is of the essence in this Agreement as to each provision in which time is an element of performance.

13.12 Further Assurances. Each Party will, upon reasonable request of the other Party, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such further instruments and documents as may be reasonably necessary in order to fulfill the purposes of this Agreement.

13.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all which together shall constitute one and the same instrument.

SIGNATURES ON FOLLOWING PAGE

EXHIBIT 1. Resale Restriction Agreement and Option to Purchase

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first written above.

OWNER(S):

Owner

Owner

CITY:

City of Dublin, a California municipal corporation

Christopher L. Foss, City Manager

ATTEST:

Anastasia Nelson, Deputy City Clerk

EXHIBIT 1. Resale Restriction Agreement and Option to Purchase

NOTARY ACKNOWLEDGMENT

[Insert Here]

EXHIBIT 1. Resale Restriction Agreement and Option to Purchase

CERTIFICATE OF ACCEPTANCE
(Pursuant to Government Code §27281)

This is to certify that the interest in real property conveyed by the Resale Restriction Agreement and Option to Purchase dated **DATE** from **Owner(s) as appear on title** to the City of Dublin, a California municipal corporation, is hereby accepted by the undersigned office or agent on behalf of the City of Dublin pursuant to authority conferred by the Resolution No. 24-87 dated April 13, 1987; and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

Christopher L. Foss, City Manager

Attest:

Anastasia Nelson, Deputy City Clerk

EXHIBIT 1. Resale Restriction Agreement and Option to Purchase

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT 1. Resale Restriction Agreement and Option to Purchase

EXHIBIT B

FORM OF NOTICE OF INTENT TO TRANSFER

To: City of Dublin
100 Civic Plaza
Dublin, CA 94568
Attn: Housing Division

Date: _____

Re: Notice of Intent to Transfer

Pursuant to the terms of the Resale Restriction Agreement and Option to Purchase, dated **Date**, the undersigned Owner(s), **Owner Name(s)**, hereby give(s) notice of his/her/their intent to transfer the property located at **Unit Address, Dublin, California 94568** (the "Property"). Owner may be contacted at the Property or at the following address:

_____ Telephone:____

Email: _____

If applicable: The proposed transfer of the Property is to the following person(s):

Name: _____
Address: _____

Telephone: _____

The proposed transfer is (check one):

☐ Sale
☐ Other Specify: _____

Next Anticipated Home Tenure: ☐ Rental ☐ Ownership ☐ Unknown

Reason for Selling Unit (Check all that apply):

☐ Want to own unrestricted home
☐ Home is too small ☐ Home is too large
☐ Job relocation ☐ Retirement ☐ Want to move closer to job
☐ Change in family situation
☐ Home expenses are too great
☐ Other: _____

Owner(s) signature(s):

Signature

Signature

Print Name

Print Name

EXHIBIT 1. Resale Restriction Agreement and Option to Purchase

EXHIBIT C

FORM OF NOTICE OF EXERCISE (Resale Restriction Agreement)

Date: _____

To (Owner/Transferee): _____

Address: _____

Re: Notice of Exercise

The City of Dublin (" **City**") hereby gives notice that it is exercising its option to purchase the real property located at **Unit Address, Dublin, California 94568**. The option has been granted to the City pursuant to the Resale Restriction Agreement with Option to Purchase executed by and between Owner and the City dated as of **Date** and recorded on **Date** as Instrument No. **201XXXXXXX** (the City has assigned its option to purchase the real property to _____).

An escrow for the purchase will be opened with _____ Title Company.

Dated: _____

CITY OF DUBLIN

By:

Its:

EXHIBIT 1. Resale Restriction Agreement and Option to Purchase

EXHIBIT D

INCLUSIONARY ZONING BASE RESALE PRICE WORKSHEET

Date: _____

Owner(s): _____

Address: _____ Dublin, CA 94568

Purchase Price: \$ _____

Date of Purchase: _____

Years Owned: _____ years

| CALCULATION BASED ON INCREASE IN MEDIAN INCOME*** | | | |
|--|--|-------|---|
| Present Median Income: \$ _____ Family of four, County of Alameda (at time of sale of unit) | Effective Date: _____ Effective Date: _____ | | |
| Original Median Income: \$ _____ Family of four, County of Alameda (at time of purchase of unit) | | | |
| Amount of Increase: _____ Family of four, County of Alameda (Present median income minus original median income) | | | |
| Increase in Price: _____ | x | _____ | x |
| | | _____ | = |
| Method #1 Resale Price: _____ | + | _____ | = |
| | | _____ | |

Based on the above, the base resale price as of this date, _____, is: _____

By: _____

EXHIBIT E

FORM OF REQUEST FOR NOTICE OF DEFAULT

Recording requested by and when
recorded mail to:

City of Dublin
100 Civic Plaza
Dublin, CA 94568
Attn: City Clerk

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(Space Above This Line For Recorder's Use Only)

Escrow Number:

Loan Number:

REQUEST FOR NOTICE UNDER SECTION 2924b CIVIL CODE

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under the Deed of Trust recorded as Instrument No. **201XXXXXXX** recorded concurrent herewith in the Official Records of Alameda County, California, and describing land therein as **Address, Dublin, California 94568**:

(See attached legal description)

Executed by **Owner(s)**, as Trustor, in which **Bank** is named as Lender, with **Trustee** as Trustee, and **Beneficiary** as Beneficiary, be mailed to the *City of Dublin, 100 Civic Plaza, Dublin, California 94568, Attn.: City Manager*

By: _____
City Manager

NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT ONLY TO THE ADDRESS CONTAINED IN THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.

EXHIBIT F

FORM OF DISCLOSURE STATEMENT

UNDER THE TERMS OF THE RESALE RESTRICTION AGREEMENT AND OPTION TO PURCHASE ("AGREEMENT") THAT YOU HAVE ENTERED WITH THE CITY OF DUBLIN ("CITY") AND WHICH WILL BE RECORDED AGAINST THE PROPERTY, THERE ARE RESTRICTIONS ON THE OCCUPANCY AND SALE OF THE PROPERTY YOU ARE BUYING. EXCEPT FOR A TRANSFER TO THE CITY FOLLOWING CITY'S EXERCISE OF ITS OPTION TO PURCHASE, THIS PROPERTY MAY ONLY BE SOLD TO AN "ELIGIBLE HOUSEHOLD" AT A PRICE NOT TO EXCEED THE ADJUSTED RESALE PRICE WHICH IS CAPPED AT AN "AFFORDABLE UNIT COST" AS DEFINED IN THE AGREEMENT.

THIS MEANS THAT YOU MAY NOT SELL THE PROPERTY FOR MARKET VALUE TO WHOMEVER YOU LIKE.

THESE RESTRICTIONS WILL BE IN EFFECT FOR **55 YEARS FROM ORIGINAL DATE OF SALE**. ANY SALE OF THE PROPERTY IN VIOLATION OF THE RESTRICTIONS SHALL BE VOIDABLE AT THE ELECTION OF THE CITY, AND SHALL ENTITLE THE CITY TO EXERCISE ITS OPTION TO PURCHASE THE PROPERTY.

TO DETERMINE WHO AN ELIGIBLE HOUSEHOLD IS, AND WHAT THE ADJUSTED RESALE PRICE AND AFFORDABLE HOUSING COST ARE, YOU SHOULD CONTACT THE HOUSING DIVISION OF THE CITY OF DUBLIN.

YOU ARE REQUIRED TO OCCUPY THE PROPERTY AS YOUR PRINCIPAL RESIDENCE THROUGHOUT THE PERIOD OF TIME THAT YOU OWN THE PROPERTY, AS DEFINED IN THE AGREEMENT. THIS MEANS THAT YOU MAY NOT RENT OR LEASE THE PROPERTY, OR PORTION THEREOF, DURING THE TERM OF THE AGREEMENT, AND THAT YOU MUST TAKE POSSESSION OF AND OCCUPY THE PROPERTY AS YOUR PRINCIPAL RESIDENCE WITHIN SIXTY (60) DAYS OF THE CLOSE OF ESCROW FOR THE PROPERTY. THE CITY SHALL CONDUCT A MONITORING OF THE OWNER-OCCUPANCY STATUS OF THE PROPERTY ON AT LEAST AN ANNUAL BASIS, AND YOU ARE REQUIRED TO PROVIDE SUCH DOCUMENTS AND OTHER EVIDENCE AS CITY MAY REQUEST TO VERIFY COMPLIANCE WITH THIS REQUIREMENT.

YOU SHOULD READ AND UNDERSTAND THE TERMS OF THE RESALE RESTRICTION AGREEMENT AND OPTION TO PURCHASE THAT WILL BE RECORDED AGAINST THE PROPERTY. YOU MAY OBTAIN A COPY FROM THE CITY OF DUBLIN OR FROM THE ESCROW COMPANY.

YOU SHOULD ALSO BE AWARE THAT A PERFORMANCE DEED OF TRUST WILL BE RECORDED AGAINST THE PROPERTY TO ENSURE COMPLIANCE WITH THE AGREEMENT. YOU MAY OBTAIN A COPY FROM THE CITY OF DUBLIN OR FROM THE ESCROW COMPANY.

I HAVE READ THE FOREGOING AND I UNDERSTAND WHAT IT MEANS.

Owner

Owner

EXHIBIT G

PERFORMANCE DEED OF TRUST

EXHIBIT 1. Resale Restriction Agreement and Option to Purchase

EXHIBIT H

OWNER'S NOTICE OF INABILITY TO LOCATE ELIGIBLE HOUSEHOLD

To: City of Dublin ("City")

From: _____ ("Owner")

BMR Unit Address: _____ ("BMR Unit")

The Owner hereby certifies to the City:

That he/she has made bona fide good faith marketing efforts as defined in Section 6.4.2 of the City of Dublin Guidelines to the Inclusionary Zoning Regulations Ordinance ("Guidelines") to locate an **Eligible Household** for purchase of the BMR Unit at the **Base Resale Price**, or **Adjusted Resale Price**, as such terms are defined in the "Resale Restriction Agreement and Option to Purchase," or the "Loan, Occupancy, Refinancing and Resale Restriction Agreement with Option to Purchase" entered into between the City and Owner as applicable;

That he/she is unable to locate an Eligible Household to purchase the BMR Unit;

That at least one of the following conditions applies: **Proven Hardship** and/or **Excessive Time on the Market**; **Check all that apply:**

_____ **Proven Hardship:** The BMR Unit Owner has made a good faith effort (BMR Unit Owner has complied with ALL recommended marketing provisions as set forth in Section 6.4.2 of the Guidelines) to sell the BMR Unit for six (6) or more months and has a specific need to sell the home due to financial or personal hardship.

Eligible hardships include:

- _____ A change in annual household income that has resulted in housing costs (mortgage payment, homeowners' association dues, property taxes, and property insurance) exceeding 50% of monthly income;
- _____ Relocation of employment to a work site that is 60 miles or more from the City of Dublin; or
- _____ The maximum restricted resale price, as provided by City Staff in the current Consent to Transfer letter is below or within 10 percent of that of recent (within 3 months) sales prices of comparable nearby market homes as evidenced by documentation of these comparable sales (list prices are not acceptable).

_____ **Excessive Time on Market:** The BMR Unit Owner has made a good faith effort (BMR Unit Owner has complied with ALL recommended marketing provisions as set forth in Section 6.4.2 of the Guidelines) to sell the BMR unit for nine (9) or more months; and

That he/she has provided documentation to the City indicating compliance with the good faith marketing efforts and documentation of either Proven Hardship or Excessive Time on Market with this Notice.

I/We certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

Signed by Owner(s): _____ Date: _____

EXHIBIT I

CERTIFICATION UPON TRANSFER OF PROPERTY TO MARKET PURCHASER

This certification is entered into by and between _____ (“Seller”) of the Property located at _____ in Dublin, California (“Property”), and _____ (“Buyer”) of the Property (together, the “Parties”). This Certification is required to be entered into by the Parties with respect to that certain Resale Restriction Agreement with Option to Purchase (“RRA”) entered into by and between the City of Dublin (“City”) and Seller on _____ (date) and recorded on _____ (date) in the Alameda County records as Instrument Number _____.

The Parties hereby certify the following:

- 1) That the sale of the Property shall be closed in accordance with the terms of the sales contract and other documents submitted and approved by the City;
- 2) That neither the Buyer nor any other party has paid, and will not pay, to the Seller, and the Seller has not received and will not receive from the receive from the Buyer or any other party, money or other consideration, including personal property, in addition to what is set forth in the sales contract and documents submitted to the City;
- 3) That in the event a Transfer is made in violation of the terms of the RRA or false or misleading statements are made in any documents or certification submitted to the City, the City shall have the right to pursue any remedies at law or in equity such as may be appropriate;
- 4) That in any event, any costs, liabilities or obligations incurred by the Seller and the Owner for the return of any moneys paid or received in violation of the RRA or for any costs and legal expenses, shall be borne by the Seller and/or the Buyer and both Parties shall hold the City and its designee harmless and reimburse their expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of the RRA.

The Parties certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

SELLER(S):

BUYER(S):

(Print name)

(Print name)

Date

Date

2788938.1

Exhibit 2. Performance Deed of Trust (sample)

Recording requested by and when
recorded mail to:

City of Dublin
100 Civic Plaza
Dublin, CA 94568
Attn: City Clerk

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(Space Above This Line For Recorder's Use Only)



**PERFORMANCE DEED OF TRUST
(Option to Cure and Purchase Agreement)**

THERE ARE RESTRICTIONS ON THE SALE OF THE PROPERTY ENCUMBERED BY THIS DEED OF TRUST. EXCEPT FOR A TRANSFER TO THE CITY OF DUBLIN (THE "CITY") OR CITY'S ASSIGNEE FOLLOWING CITY'S EXERCISE OF ITS OPTION TO PURCHASE, THIS PROPERTY MAY ONLY BE SOLD TO AN "ELIGIBLE HOUSEHOLD" AT A PRICE NOT TO EXCEED THE ADJUSTED RESALE PRICE WHICH IS CAPPED AT AN "AFFORDABLE UNIT COST." THE RESALE RESTRICTION AGREEMENT ALSO RESTRICTS THE EXTENT TO WHICH THIS PROPERTY MAY BE ENCUMBERED BY JUNIOR FINANCING AND LIMITS TRUSTOR'S RIGHTS TO REFINANCE EXISTING MORTGAGES.

This PERFORMANCE DEED OF TRUST ("Deed of Trust") is made as of **Date** ("Effective Date") by **OWNER(s) as appears on title** ("Trustor") whose address is **ADDRESS, Dublin, CA 94568** in favor of **City of Dublin** ("Trustee"), for the benefit of the CITY OF DUBLIN (referred to variously as "City" or "Beneficiary") whose address is 100 Civic Plaza, Dublin, CA 94568, as Beneficiary.

RECITALS

A. Trustor is the owner of the real property located at **ADDRESS, Dublin, CA 94568** and more particularly described in the attached Exhibit A, (the "Property").

B. The Trustor's predecessor in interest developed the Property pursuant to the City's Inclusionary Zoning Regulations, which regulations require developers of rental and ownership housing to construct within their projects units that are affordable to very low-, low-, and moderate-income households and which regulations require the Property to be subjected to restrictions on resale that ensure that the Property remains affordable.

C. In connection with the Inclusionary Zoning Regulations, Beneficiary and Trustor entered into a Resale Restriction Agreement and Option to Purchase dated as

of the Effective Date and recorded in the Official Records of Alameda County substantially concurrently herewith (the "Resale Restriction Agreement") (capitalized terms used without definition herein have the meaning ascribed to such terms in the Resale Restriction Agreement); and

D. Pursuant to the Resale Restriction Agreement, Trustor is obligated, among other requirements, to sell the Property only to Eligible Purchasers at a price not in excess of the Adjusted Resale Price, which is capped at the Affordable Unit Cost; and

E. The Resale Restriction Agreement also provides (among other provisions) that: (i) Trustor is obligated to notify Beneficiary of Trustor's intent to sell the Property in order to enable Beneficiary to exercise its option to purchase the Property at a restricted price; (ii) Beneficiary has an option to purchase the Property if Trustor defaults under the Resale Restriction Agreement; and (iii) there are restrictions on Trustor's ability to encumber the Property and to refinance the existing loans secured by the Property.

AGREEMENT

NOW, THEREFORE, to secure the full and timely performance by Trustor of the Secured Obligation, it is agreed as follows:

1. Grant in Trust. Trustor, in consideration of the promises herein recited and the trust herein created, hereby irrevocably and unconditionally grants, transfers, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale, all estate, right title and interest which Trustor now has or may later acquire in and to that certain real property located in the City of Dublin, County of Alameda, State of California, described in the attached Exhibit A and commonly known as: **ADDRESS, Dublin, CA 94568** (the "Property") together with all of the following:

(i) all improvements now or hereafter located or constructed on the Property and all replacements and additions thereto ("Improvements");

(ii) all easements, rights of way, appurtenances and other rights used in connection with the Property or as a means of access thereto ("Appurtenances");

(iii) all fixtures now or hereafter attached to or used in and about the Property or the improvements located thereon or hereafter located or constructed on the Property, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to the improvements in any manner ("Fixtures and Equipment"); and

(iv) all leases, subleases, licenses and other agreements relating to use or occupancy of the Property ("Leases") and all rents or other payments which may now or hereafter accrue or otherwise become payable to or for the benefit of Trustor ("Rents") (whether or not such Leases and Rents are permitted by the Resale Restriction Agreement).

All of the above-referenced Property, Improvements, Appurtenance, Fixtures and Equipment, Leases and Rents are herein referred to collectively as the "Security".

2. Obligations Secured. This Deed of Trust is given for the purpose of securing payment and/or performance of the following (the "Secured Obligations"): (i) all present and future obligations of Trustor set forth in this Deed of Trust or in the Resale Restriction Agreement (including without limitation, Trustor's obligation to convey the Property only to Eligible Purchasers at no more than the Adjusted Resale Price, which is capped at an Affordable Unit Cost (as such terms are defined in the Resale Restriction Agreement); (ii) all additional present and future obligations of Trustor, to Beneficiary under any other agreement or instrument acknowledged by Trustor (whether existing now or in the future) which states that it is or such obligations are, secured by this Deed of Trust; (iii) all modifications, supplements, amendments, renewals, and extensions of any of the foregoing, whether evidenced by new or additional documents; and (iv) reimbursement of all amounts advanced by or on behalf of Beneficiary to protect Beneficiary's interests under this Deed of Trust.

3. Assignment of Rents, Issues, and Profits. Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary the rents, royalties, issues, profits, revenue, income and proceeds of the Property. This is an absolute assignment and not an assignment for security only. Except to the extent that the lease or rental of the Property is prohibited by the Resale Restriction Agreement, Beneficiary hereby confers upon Trustor a license to collect and retain such rents, royalties, issues, profits, revenue, income and proceeds as they become due and payable prior to any Event of Default hereunder. Upon the occurrence of any such Event of Default, Beneficiary may terminate such license without notice to or demand upon Trustor and without regard to the adequacy of any security for the indebtedness hereby secured, and may either in person, by agent, or by a receiver to be appointed by a court, enter upon and take possession of the Property or any part thereof, and sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, to any indebtedness secured hereby, and in such order as Beneficiary may determine. Beneficiary's right to the rents, royalties, issues, profits, revenue, income and proceeds of the Property does not depend upon whether or not Beneficiary takes possession of the Property. The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and/or is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land and Improvements, Beneficiary shall not be deemed to be a "mortgagee in possession," shall not be responsible for

performing any obligation of the lessor under any Lease, shall not be liable in any manner for the Property, or the use, occupancy, enjoyment or operation of any part of it, and unless due solely to the willful misconduct or gross negligence of Beneficiary, shall not be responsible for any dangerous or defective condition of the Property or any negligence in the management, repair or control of the Property.

4. Fixture Filing. This Deed of Trust is intended to be and constitutes a fixture filing pursuant to the provisions of the UCC with respect to all of the Property constituting fixtures, is being recorded as a fixture financing statement and filing under the UCC, and covers property, goods and equipment which are or are to become fixtures related to the Land and the Improvements. Trustor covenants and agrees that this Deed of Trust is to be filed in the real estate records of Alameda County and shall also operate from the date of such filing as a fixture filing in accordance with Section 9502 and other applicable provisions of the UCC. This Deed of Trust shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to the UCC, as amended. Trustor shall be deemed to be the "debtor" and Beneficiary shall be deemed to be the "secured party" for all purposes under the UCC. The full name of Trustor and the mailing address of Trustor are set forth in Section 10.2 of this Deed of Trust.

5. Trustor's Representations, Warranties and Covenants.

5.1 Trustor's Estate. Trustor represents and warrants that Trustor is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Security, that other than this Deed of Trust, the Security is encumbered only by: (a) that deed of trust executed by Trustor in connection with a loan made to Trustor by **Lender** (the "First Lender"), securing a promissory note executed by Trustor in favor of the First Lender ("First Lender Note"), to assist in the purchase of the Property (the "First Lender Deed of Trust") and (b) the Resale Restriction Agreement. Trustor agrees to warrant and defend generally the title to the Security against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring the City's interest in the Security. (As used in this Deed of Trust, the term "First Lender" shall include all successors and assigns of the First Lender.)

5.2 Repayment of Sums Owed under Resale Restriction Agreement. Trustor will promptly pay to the City all sums due under the Resale Restriction Agreement.

5.3 Resale Restriction Agreement. Trustor will observe and perform all of the covenants and agreements of the Resale Restriction Agreement.

5.4 First Lender Loan. Trustor will observe and perform all of the covenants and agreements of the First Lender Note, First Lender Deed of Trust, and related First Lender loan documents.

5.5 Charges; Liens. Trustor will pay prior to delinquency, all taxes, assessments and other charges, fines and impositions affecting the Security directly to the payee thereof. Upon request by the City, Trustor will promptly furnish to the City all notices of such amounts due. Trustor shall pay when due each obligation secured by or reducible to a lien, charge or encumbrance which now does or later may encumber or appear to encumber all or part of the Property or any interest in it, whether or not such lien, charge or encumbrance is or would be senior or subordinate to this Deed of Trust. Trustor shall not be required to pay any tax, levy, charge or assessment so long as its validity is being actively contested in good faith and by appropriate actions and/or proceedings which will operate to prevent the enforcement of the lien or forfeiture of the Security or any part thereof.

5.6 Hazard Insurance.

(a) Trustor will keep the Security insured by a standard all risk property insurance policy equal to the replacement value of the Security (adjusted every five (5) years by appraisal, if requested by the City). If the Security is located in a flood plain, Trustor shall also obtain flood insurance. In no event shall the amount of insurance be less than the amount necessary to prevent Trustor from becoming a co-insurer under the terms of the policy.

The insurance carrier providing this insurance shall be licensed to do business in the State of California and be chosen by Trustor subject to approval by the City.

All insurance policies and renewals thereof will be in a form acceptable to the City, and will include a standard mortgagee clause with standard lender's endorsement in favor of the holder of the First Lender Note and the City as their interests may appear and in a form acceptable to the City. The City shall have the right to hold, or cause its designated agent to hold, the policies and renewals thereof, and Trustor shall promptly furnish to the City, or its designated agent, the original insurance policies or certificates of insurance, all renewal notices and all receipts of paid premiums. In the event of loss, Trustor will give prompt notice to the insurance carrier and the City or its designated agent. The City, or its designated agent, may make proof of loss if not made promptly by Trustor. The City shall receive thirty (30) days advance notice of cancellation of any insurance policies required under this section.

Unless otherwise permitted by the City in writing, insurance proceeds, subject to the rights of the First Lender, will be applied to restoration or repair of the Security damaged. If permitted by City, and subject to the rights of the First Lender, the insurance proceeds shall be used to repay any amounts due under Section 14 of the Resale Restriction Agreement, with the excess, if any, paid to Trustor. If the Security is abandoned by Trustor, or if Trustor fails to respond to the City, or its designated agent, within thirty (30) days from the date notice is mailed by either of them to Trustor that the insurance carrier offers to settle a claim for insurance benefits, the City, or its designated agent, is authorized to collect and apply the insurance proceeds at the City's

option either to restoration or repair of the Security or to pay amounts due under the Resale Restriction Agreement.

If the Security is acquired by the City, all right, title and interest of Trustor in and to any insurance policy and in and to the proceeds thereof resulting from damage to the Security prior to the sale or acquisition will pass to the City to the extent of the sums secured by this Deed of Trust immediate prior to such sale or acquisition, subject to the rights of the First Lender.

(b) During the course of any rehabilitation of the improvements located on the Property, Trustor shall hire only licensed contractors who maintain the following forms of insurance:

(i) Liability Insurance. Comprehensive general liability insurance against liability for bodily injury to or death of any person or property damage arising out of an occurrence on or about the Property. The limits of such insurance shall be not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage.

(ii) Worker's Compensation Insurance. Worker's compensation insurance covering all persons employed in connection with any work on the Property.

5.7 Preservation and Maintenance of Security. Trustor will keep the Security in good repair and in a neat, clean, and orderly condition and will not commit waste or permit impairment or deterioration of the Security. If there arises a condition in contravention of this Section, and if the Trustor has not cured such condition within thirty (30) days after receiving a City notice of such a condition, then in addition to any other rights available to the City, the City shall have the right (but not the obligation) to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Security to recover its cost of curing.

5.8 Protection of the City's Security. If Trustor fails to perform the covenants and agreements contained in this Deed of Trust or if any action or proceeding is commenced which materially affects the City's interest in the Security, including, but not limited to, default under the First Lender Deed of Trust, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then the City, at the City's option, without releasing Trustor from any obligation hereunder, may make such appearances, disburse such sums and take such action as it determines necessary to protect the City's interest, including but not limited to, disbursement of reasonable attorneys' fees and entry upon the Security to make repairs. Any amounts disbursed by the City pursuant to this paragraph, with interest thereon, will become an indebtedness of Trustor secured by this Deed of Trust. Unless Trustor and City agree to other terms of payment, such amount will be payable upon notice from the City to Trustor requesting payment thereof, and will bear interest from the date of disbursement at the lesser of (i) ten percent (10%); or (ii) the highest rate

permissible under applicable law. Nothing contained in this paragraph will require the City to incur any expense or take any action hereunder.

5.9 Inspection. The City may make or cause to be made reasonable entries upon and inspections of the Security; provided that the City will give Trustor reasonable notice of inspection.

5.10 Hazardous Substances. Trustor shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances in, on, under, about, or from the Property. Trustor shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property when used and disposed of in accordance with Environmental Law.

“Hazardous Substances” means any substance defined as toxic or hazardous substances or hazardous waste or regulated under any Environmental Law, and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials.

“Environmental Law” means all federal, state or local statutes, ordinances, regulations, orders, decrees and judgments that relate to health, safety or environmental protection including without limitation the regulation of the use, disposal, manufacture, or release of Hazardous Substances.

Trustor shall promptly give City written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Trustor has actual knowledge. If Trustor learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Trustor shall promptly take all necessary remedial actions in accordance with Environmental Law.

6. Nonliability for Negligence, Loss, or Damage; No Joint Venture. Trustor acknowledges, understands and agrees that the relationship between Trustor and the City is solely that of a borrower and lender, and that the City does not undertake or assume any responsibility for or duty to Trustor to select, review, inspect, supervise, pass judgment on, or inform Trustor of the quality, adequacy or suitability of the Security or any other matter. The City owes no duty of care to protect Trustor against negligent, faulty, inadequate or defective building or construction or any condition of the Security and Trustor agrees that neither Trustor, or Trustor’s heirs, successors or assigns shall ever claim, have or assert any right or action against the City for any loss, damage or other matter arising out of or resulting from any condition of the Security and will hold City harmless from any liability, loss or damage for these things. Nothing contained

herein or in Note or the Resale Restriction Agreement shall be deemed to create or construed to create a partnership, joint venture or any relationship other than that of a borrower and lender.

7. Indemnity. Trustor agrees to defend, indemnify, and hold the City of Dublin and its elected and appointed officials, officers, employees, and agents ("Indemnitees") harmless from and against all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys fees that the Indemnitees may incur as a direct or indirect consequence of:

- (i) Trustor's failure to perform any obligations as and when required by the Resale Restriction Agreement and this Deed of Trust; or
- (ii) the failure at any time of any of Trustor's representations or warranties to be true and correct.

8. Acceleration; Remedies. Upon Trustor's breach of any covenant or agreement of Trustor in Resale Restriction Agreement or this Deed of Trust, including, but not limited to, the covenants to pay, when due, any sums secured by this Deed of Trust, the City, prior to acceleration, will mail by express delivery with delivery receipt, notice to Trustor specifying; (1) the breach; (2) the action required to cure such breach; (3) a date, not less than thirty (30) days from the date the notice is received by Trustor as shown on the return receipt, by which such breach is to be cured; and (4) if the breach is curable, that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Security. The notice will also inform Trustor of Trustor's right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of default or any other defense of Trustor to acceleration and sale. If the breach is not cured on or before the date specified in the notice, the City, at the City's option, may:

(a) declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by California law;

(b) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any breach hereunder or invalidate any act done in response to such breach and, notwithstanding the continuance in possession of the Security, the City shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any uncured breach, including the right to exercise the power of sale;

(c) commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(d) deliver to Trustee a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found at California Civil Code Sections 2924 et seq., as amended from time to time; or

(e) exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law.

The City shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorneys' fees.

9. Trustor's Right to Reinstate. Notwithstanding the City's acceleration of the sums secured by this Deed of Trust, Trustor will have the right to have any proceedings begun by the City to enforce this Deed of Trust discontinued at any time prior to five (5) days before sale of the Security pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Trustor pays City all sums which would be then due under this Deed of Trust if there were no acceleration under this Deed of Trust or the Resale Restriction Agreement; (b) Trustor cures all breaches of any other covenants or agreements of Trustor contained in the Resale Restriction Agreement or this Deed of Trust; (c) Trustor pays all reasonable expenses incurred by City and Trustee in enforcing the covenants and agreements of Trustor contained in the Resale Restriction Agreement or this Deed of Trust, and in enforcing the City's and Trustee's remedies, including, but not limited to, reasonable attorney's fees; and (d) Trustor takes such action as City may reasonably require to assure that the lien of this Deed of Trust, City's interest in the Security and Trustor's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Trustor, this Deed of Trust and the obligations secured hereby will remain in full force and effect as if no acceleration had occurred.

10. Deleted.

11. Reconveyance. Upon the expiration of the term of the Resale Restriction Agreement if the Trustor owns and occupies the Property and is not in violation of any provisions of this Deed of Trust or the Resale Restriction Agreement, the City will request Trustee to reconvey the Security and will surrender this Deed of Trust and the Resale Restriction Agreement to Trustee. Trustee will reconvey the Security without warranty and without charge to the person or persons legally entitled thereto. Such person or persons will pay all costs of recordation, if any.

12. Substitute Trustee. The City, at the City's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. The

successor trustee will succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

13. Superiority of First Lender Documents. Notwithstanding any provision herein, this Deed of Trust shall not diminish or affect the rights of the First Lender under the First Lender Deed of Trust or any subsequent First Lender deeds of trust hereafter recorded against the Security in compliance with the requirements of Section 11 of the Resale Restriction Agreement.

Notwithstanding any other provision hereof, the provisions of this Deed of Trust shall be subordinate to the lien of the First Lender Deed of Trust and shall not impair the rights of the First Lender, or such lender's assignee or successor in interest, to exercise its remedies under the First Lender Deed of Trust in the event of default under the First Lender Deed of Trust by the Trustor. Such remedies under the First Lender Deed of Trust include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure. After such foreclosure or acceptance of a deed in lieu of foreclosure, this Deed of Trust shall be forever terminated and shall have no further effect as to the Property or any transferee thereafter; provided, however, if the holder of such First Lender Deed of Trust acquired title to the Property pursuant to a deed or assignment in lieu of foreclosure, this Deed of Trust shall automatically terminate upon such acquisition of title, provided that (i) the City has been given written notice of default under such First Lender Deed of Trust with a sixty (60)-day cure period and (ii) the City shall not have cured or commenced to cure the default within such sixty (60)-day period or commenced to cure and given its firm commitment to complete the cure in form and substance acceptable to the First Lender.

14. Request for Notice. City requests that copies of the notice of default and notice of sale be sent to City at the address set forth in Section 15.5.

15. Miscellaneous.

15.1 Forbearance by the City Not a Waiver. Any forbearance by the City in exercising any right or remedy will not be a waiver of the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by the City will not be a waiver of the City's right to require satisfaction of any obligations secured by this Deed of Trust.

15.2 Remedies Cumulative. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or any other document, or afforded by law or equity, and may be exercised concurrently, independently or successively.

15.3 Successors and Assigns Bound. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the City and Trustor subject to the provisions of this Deed of Trust.

15.4 Joint and Several Liability. If this Deed of Trust is executed by more than one person as Trustor, the obligations of each shall be joint and several.

15.5 Notices. Except for any notice required under applicable law to be given in another manner, (a) any notice to Trustor provided for in this Deed of Trust will be given by certified mail, return receipt requested, express delivery with delivery receipt or personal delivery with delivery receipt, addressed to Trustor at the address shown in the first paragraph of this Deed of Trust or such other address as Trustor may designate by notice to the City as provided herein, and (b) any notice to the City will be given by certified mail, return receipt requested, express delivery with delivery receipt or personal delivery with delivery receipt, to the City of Dublin, 100 Civic Plaza, Dublin, CA 94568 Attn: City Manager, or to such other address as the City may designate by notice to Trustor as provided above. Notice shall be effective as of the date received by City as shown on the return receipt.

15.6 Governing Law. This Deed of Trust shall be governed by the laws of the State of California.

15.7 Severability. In the event that any provision or clause of this Deed of Trust or the Resale Restriction Agreement conflicts with applicable law, such conflict will not affect other provisions of this Deed of Trust or the Resale Restriction Agreement which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and the Resale Restriction Agreement are declared to be severable.

15.8 Captions. The captions and headings in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

15.9 Nondiscrimination. Trustor covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Trustor or any person claiming under or through Trustor establish or permit any such practice or practices of discrimination or segregation with reference to the use, occupancy, or transfer of the Property. The foregoing covenant shall run with the land.

Signatures on following page

Exhibit 2. Performance Deed of Trust

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first written above.

Owner

Owner

EXHIBIT A

LEGAL DESCRIPTION

Exhibit 3. Sample Marketing and Sales Plan

Exhibit 3. Sample Marketing and Sales Plan

Developer Name

Below Market Rate Marketing and Sales Plan

Presented by:

Developer

Contact Name
Phone Number
Email Address

Exhibit 3. Sample Marketing and Sales Plan

1. Project Overview**1.A Project Description**

Provide a narrative description of the overall development project including but not limited to:

- Architectural style
- Number and type of homes
- Number and type of Below Market Rate (BMR) homes
- On-site features and amenities
- Location
- Proximity to transit, goods, and services

1.B Project Contacts

| | |
|---|--|
| Development Name and Location | Development Name Address Dublin, CA 94568 |
| Developer | Developer Organization Name Address Phone Number |
| Developer Contact Person(s) | Name-Primary Contact Phone Number E-Mail Address Name-Secondary Contact Phone Number E-Mail Address |
| Title/Escrow Company and Escrow Officer | Organization Contact Name Phone Number Fax Number E-Mail Address |
| Preferred Lender | Organization Contact Name Phone Number Fax Number E-Mail Address |

1.C BMR Home Inventory

Provide a list of the BMR homes for sale in the property. For each home, include:

- Address and unit number

Exhibit 3. Sample Marketing and Sales Plan

- Number of bedrooms
- Number of bathrooms
- Monthly HOA amount
- Construction phase

2. Marketing

Describe the efforts the developer will undertake to publicize the development project and the availability of BMR

homes for sale. A marketing campaign may include, but is not limited to:

1. **Public employee outreach.** Post informational flyers as appropriate at City offices and facilities, senior centers, and schools. Developer will also approach retail businesses, local employers, and business organizations to distribute informational flyers to their employees and members.
2. **Print media.** Place periodic advertisements in local newspapers and on housing websites. Potential media outlets include ANG news group, the Contra Costa Times and affiliated papers, Craigslist, and the Home Buyers Guide.
3. **Public relations.** Send periodic public information releases to media sources including announcements for new releases of BMR homes, application deadlines, and information sites.
4. **Targeted mailings.** Create a mailer targeted to local renters who meet the eligibility requirements, utilizing mailing lists including those tenants who currently reside in apartment communities owned and managed by developer.
5. **Website.** Post all information relating to income guidelines, applicant qualifications, resale deed restrictions, the community, floor plans, and the purchasing process on the developer's website or a dedicated development project website. Include online information, application packets, and contact information.
6. **Point of sale.** Create a point-of-sale poster or other collateral material that will be prominently displayed in the sales offices of all developer's communities.

3. Sales Training

Describe whether the sales team is "in-house" or an outside brokerage and how frequently it will be

Exhibit 3. Sample Marketing and Sales Plan

stationed on-site at the development. Confirm that sales representatives will be fully informed of the policies and procedures related to the City of Dublin's Inclusionary Housing Regulations Ordinance. Provide the planned open hours of the on-site sales office, if applicable. In addition, provide confirmation that the escrow officer will be fully informed of City procedures and policies related to the sale of BMR homes.

4. Application and Selection Process

1. **Application period.** Describe the length of the initial application and whether or not subsequent deadlines will be set or if applications will then be accepted on a rolling basis.
2. **Application materials.** Describe the contents of the application packet, where applications can be obtained, and where they should be submitted for review.
3. **Use of qualified lender.** Describe whether or not applicants must prequalify with a preferred lender.
4. **Application review.** Describe how the sales staff will review applications for completeness, work with applicants to confirm income and other relevant information, and organize qualified applications based on the City's preference points system. Note when the initial and subsequent applications will be forwarded to the City for compliance reviews.
5. **Offer and contract process.** Describe how the developer will offer BMR homes to applicants approved by the City and the steps that will be taken to enter into a purchase agreement and open escrow.
6. **Coordination with all parties.** Describe how the developer will work with the buyer, escrow officer, lender, and City staff throughout the escrow process to facilitate the exchange of information and documentation (as described in the processes outlined in the City's Guidelines to the Inclusionary Zoning Regulations Ordinance) to ensure a smooth and timely close of escrow.
7. **Translation services.** Describe how the developer will accommodate applicants or interested parties who may need translation services.

5. Schedule

Provide a time frame for key events, including when:

Exhibit 3. Sample Marketing and Sales Plan

- Sales staff will meet with City staff
- The marketing campaign will be launched
- Model homes will be available for touring
- Applications for BMR homes will be accepted (for each phase)
- Applications for BMR homes will be reviewed and ranked (for each phase), based on procedures outlined in the City's Guidelines to the Inclusionary Zoning Regulations Ordinance
- Applications will be submitted to the City (for each phase)
- Reservations for BMR homes will be confirmed
- Contracts will be signed

Exhibit 3. Sample Marketing and Sales Plan

**(NAME OF DEVELOPMENT)
MANAGEMENT PLAN****TABLE OF CONTENTS**

- 1. Introduction
- 1.A Project Description
- 1.B Project Ownership and Management
- 1.C Management Objectives
- 2 Management Organization, Roles, and Relationships
- 2.A Management Contact
- 2.B On-Site Management
- 2.C Maintenance Staffing
- 3 Marketing and Resident Selection
- 3.A Marketing
- 3.B Application, Screening, and Decision Process
- 3.C Waiting List Management
- 4 Monitoring and Reporting

Exhibit 3. Sample Marketing and Sales Plan

1. INTRODUCTION

1.A. Project Description

(DEVELOPMENT'S NAME), located at (LOCATION) in the City of Dublin, is a (NUMBER OF UNITS)- unit development consisting of (NUMBER OF UNITS) one-bedroom units, (NUMBER OF UNITS) two- bedroom units, and (NUMBER OF UNITS) three-bedroom units. The design is representative of the (ARCHITECTURAL STYLE TYPE) and has (DEVELOPMENT AMENITIES SUCH AS NUMEROUS OUTDOOR COMMUNITY COURTYARDS, WALKING PATHWAYS, TOT LOTS, LAUNDRY FACILITIES, GARAGES, AND/OR CARPORTS). Units at (DEVELOPMENT'S NAME) are affordable to individuals earning (PERCENTAGE OF M EDIAN) percent of the area median income for Alameda County.

1.B. Project Ownership and Management

(DEVELOPMENT'S NAME) is owned by (OWNER NAME).

1.C. Management Objectives

This management plan sets forth the general policies and procedures to be utilized at (DEVELOPMENT'S NAME) ensuring that the units continue to provide a high standard of housing for lower-income households in Dublin. (DESCRIBE OBJECTIVES)

2. MANAGEMENT ORGANIZATION, ROLES, AND RELATIONSHIPS

2.A. Management Contact

(RESPONSIBLE PERSON) is responsible for day-to-day management and maintenance of (DEVELOPMENT'S NAME). (RESPONSIBLE PERSON) will serve as the primary point of contact with the City of Dublin and will be available to respond to inquiries and communicate any issues with the City. The contact information for (RESPONSIBLE PERSON) is:

RESPONSIBLE PERSON NAME
TITLE
MAILING ADDRESS
PHONE NUMBER
E-MAIL ADDRESS

2.B. On-Site Management

(DEVELOPMENT'S NAME) has an on-site, full-time manager and (INSERT NUMBER OF ASSISTANT MANAGERS) assistant manager(s). The manager and assistant manager(s) are responsible for: handling the application process, applicant screening, and interviewing; applicant verifications; resident selection; waiting list management; new resident leasing and orientations; working with vendors and

Exhibit 3. Sample Marketing and Sales Plan

contractors; collecting, depositing, and recording rents and other fees; enforcing the lease and rules; submitting reports; cleaning the laundry rooms; effectively communicating with residents; and assisting with the provision of various resident amenities to help build a sense of community within (DEVELOPMENT'S NAME).

On-site management staff members are employees of (ORGANIZATION NAME). The manager and assistant manager(s) report to and are trained and supervised by (TITLE). The assistant manager(s) also report to and is/are supervised by the manager. The manager is in sole charge of (DEVELOPMENT'S NAME) and as such must manage and direct operations in accordance with the management plan. (NAME AND/OR TITLE) reviews job performance for adequacy and conformance with established procedures.

2.C. Maintenance Staffing

(DEVELOPMENT'S NAME) has (NUMBER OF FULL-TIME MAINTENANCE WORKERS) full-time maintenance worker(s) and (NUMBER AND POSITIONS OF ANY ADDITIONAL MAINTENANCE STAFF MEMBERS). The maintenance staff is supervised by and reports to (NAME(S) AND/OR TITLE(S) OF PERSONS SUPERVISING THE MAINTENANCE STAFF). Maintenance staff performs routine, corrective, unit turnover, and preventive maintenance tasks. The maintenance staff is responsible for daily inspections of the property, landscaping maintenance and litter removal tasks, and for acting upon maintenance requests generated from the maintenance worker's own inspections, resident requests, and requests from the (SUPERVISORY MANAGEMENT TITLE(S)).

Employees will comply with all requirements of employment as well as the policies established by (DEVELOPMENT OWNER NAME). All employees are paid by (WHO) including state and federal payroll and unemployment taxes, FICA taxes, and all other costs of employment including workers compensation insurance, employee medical insurance, overtime pay, and any other compensation or related costs as applicable.

3. MARKETING AND RESIDENT SELECTION

3.A. Marketing

(LIST WHO) is responsible for the marketing of vacant units. The manager is responsible for lease-up, marketing, and administering the (DEVELOPMENT'S NAME) waiting list. When vacancies occur, names are taken from the waiting list based on the unit size available and the date and time of application.

It is (DEVELOPMENT OWNER'S NAME) policy that the marketing of vacant units shall maximize the opportunity of all persons, regardless of race, age, gender, sexual preference, religion, national origin, familial status, or disability.

Pursuant to the Affordable Housing Agreement entered into and between the (DEVELOPMENT OWNER'S NAME) and the City of Dublin, marketing and resident selection at (DEVELOPMENT'S NAME)

Exhibit 3. Sample Marketing and Sales Plan

shall be performed in conformance with the Inclusionary Zoning Regulations specified in Chapter 8.68 of the City of Dublin Zoning Ordinance. Provisions of this ordinance will be quoted in this document as appropriate below, and the complete text of this ordinance is to be attached to the end of this document.

The availability of BMR Units at (DEVELOPMENT'S NAME) will be publicized on the development's website, on online classified listing websites, in local newspapers, and through local housing-related nonprofit organizations.

3.B. Application, Screening, and Decision Processes

1. General Considerations for Units

- a. In screening and selecting applicants for units at (DEVELOPMENT'S NAME), there will be no discrimination based on race, religion, age, national origin, disability, familial status, gender, sexual preference, or any other arbitrary factor. All applicants are asked for the same information and treated in the same manner. The applicant screening and selection process is conducted in strict conformity with both the letter and spirit of all federal and state fair housing statutes. The manager will regularly receive in-service training and counseling regarding Fair Housing requirements.
- b. All units are leased to qualified applicants based on appropriate size in relation to the number of household members.
- c. If the initial demand for units at (DEVELOPMENT'S NAME) at lease-up exceeds the number of available units, a procedure identical to that described for the administration of the waiting list described in below will be used to determine which applicants are selected to fill the available units.
- d. Remaining units shall be leased by utilizing names taken from a pre-established waiting list based on the time and date the application was received.

2. Remaining Units

- a. At the time of lease-up and subsequently, if the waiting list is depleted for a particular unit size and income category, persons interested in living at (DEVELOPMENT'S NAME) will be given tours of vacant units and common areas by the manager during office hours or by appointment. At this time, the manager will provide basic information about rents, deposits, lease and rules provisions, and special income eligibility requirements. The manager will also provide prospective residents with a resident eligibility criteria sheet outlining the application and approval processes.
- b. Prospective residents interested in applying for a unit will be given a rental application and relevant income verification forms to sign. The application includes detailed information

Exhibit 3. Sample Marketing and Sales Plan

regarding the persons who will reside in the unit, household income, employment (if applicable), present and prior residences, references, and other information needed for the manager to perform necessary screening and prioritization of the application. The manager will explain how to fill out the application and answer any questions applicants might have. If necessary, the manager will arrange for a translator to assist applicants and the manager to communicate when they do not share a common language.

- c. Applications are submitted to the management office. At the time of application the manager is to review the application to verify that it is complete. If the application is not complete, it is to be returned to the applicant with a request to provide the missing information as soon as possible. Once the information needed to screen the application is provided, the date and time the application has been accepted is written on the front of the application and the application is appropriately categorized. If there is a waiting list, then the manager should follow the procedures described below.
- d. At the time of application acceptance for an available unit, the manager will advise the applicant that they will be contacted within 10 days to set up a preliminary interview. The manager will also determine whether the applicant needs to provide any other information or sign income/asset verifications that will assist the process of eligibility screening. Any gaps in the dates provided in the rental history section of the application must be explained at the preliminary interview. At the time of the preliminary interview, the manager will ask to see and take copies of the applicant's identification (e.g., California driver's license or identification card, Social Security card or resident alien identification card) to confirm the applicant's correct identity. The manager will verify that the driver's license, identification, and Social Security numbers match those stated on the application.
- e. Prior to move-in, the (WHO) is responsible for obtaining confirmation of third-party income and asset verifications to confirm that the applicant is eligible under the requirements of the Affordable Housing Agreement. Other types of income and resident status verifications, such as Social Security, public assistance, and legal resident status will be requested by mail or in person on forms provided by the manager and signed by the applicant. Gross annual household income will be calculated in accordance with the City's Guidelines to the Inclusionary Zoning Regulations Ordinance.
- f. Incomes may not exceed the current (PERCENTAGE)% of area median income, adjusted for household size, which are published annually by the California Department of Housing and Community Development. Once all verifications of all sources of incomes and assets have been received, the manager will total income from all sources. The manager will verify that these amounts are at or below the latest published maximum amounts.
- g. Once an applicant is being considered for an available unit, the manager will request a credit report to obtain information about the applicant's credit and rental history.

Exhibit 3. Sample Marketing and Sales Plan

- h. The manager is responsible for calling the applicant's present and former landlords (or property managers) to determine the applicant's suitability as a resident of (DEVELOPMENT'S NAME). The manager will document all interviews and application screening information in writing. In the event that current and former landlords cannot be contacted by phone, the manager will mail written questionnaires, accompanied by self-addressed stamped envelopes.
 - i. Once the income verifications have been obtained and references checked, and all verifications are no more than 90 days old, the manager will schedule a final interview with all members of the applicant household. This interview is used to clarify and/or confirm any other information found during the reference checks. At this interview, any conflicting information found during the verification process and reference checks will be clarified and resolved. Expectations of resident responsibilities and behavior, as embodied in the (DEVELOPMENT'S NAME) lease and rules, will be discussed at this time.
3. The following set of standard criteria are to be used as a guide to select residents after all interview and reference check information has been taken into consideration and is applied consistently and fairly to all candidates.
- a. Applicant must have a verified total gross income below (PERCENTAGE)% of the current area median income, as applicable, adjusted for household size.
 - b. Applicant's ratio of rent-to-actual income for the requested apartment unit should not exceed 45%.
 - c. If the applicant is a full-time student who is unmarried and not eligible to file a joint federal income tax return, and who is not in a training program pursuant to Title IV of the Social Security Act, or similar federal, state, or local approved education or training programs designed to help people end their use of public assistance programs, the applicant household is ineligible to live in a BMR Unit. "Full-time student" means someone who attends school at least five months per year for the number of hours or courses which are considered to be full-time attendance. Part-time students are eligible.
 - d. Applicant must be able to provide sufficient residential information for at least the past two years to enable the manager to adequately evaluate rental history and/or place of residence. If two years of prior residential information proves insufficient for obtaining adequate references, additional residential history may be requested.
 - e. Negative rental history will be grounds for rejection, including:
 - i. Applicant owes delinquent rent or fees for damages to current landlord;
 - ii. Applicant left owing rent or owing money for damaged property to former landlord(s);

Exhibit 3. Sample Marketing and Sales Plan

- iii. Recurring applicant problems with late rent payment;
 - iv. Recurring noise/disturbance problems during applicant residency;
 - v. Recurring problems where any member of household was inconsiderate, violent, or abusive toward other residents or management personnel in current or past residences;
 - vi. Applicant exhibited serious/poor housekeeping problems which represented health or safety hazards to others;
 - vii. Applicant has had an exceptionally unstable rental history during past two years;
 - viii. Applicant was evicted for cause, within the past three years;
 - ix. Unwillingness of landlord(s) to rent to applicant again for valid reasons.
- f. Other grounds for rejection include:
- i. Negative credit history, including credit accounts in arrears, unpaid judgments and/or applicant having declared bankruptcy.
 - ii. Inability to demonstrate a history of paying rent at prior residences.
 - iii. The unit the applicant is applying for would not be the applicant's sole residence. iv. Applicant's household size either exceeds or is below reasonable occupancy limits for the available unit.
 - v. Applicant was unable to provide identification that verified their identity or legal residency.
 - vi. Applicant submitted an incomplete application and has not taken steps to remedy.
 - vii. Applicant has provided false, inconsistent, or inaccurate information on their application.
 - viii. Applicant had two unexcused failures to attend an agreed-upon time for an application appointment or interview.
 - ix. Applicant was abusive or uncooperative with management during the application process.
 - x. History of behavioral problems related to criminal activity that makes applicant a poor risk.
- g. At least one person in the household must be of legal age to execute a lease (age 18). If the

Exhibit 3. Sample Marketing and Sales Plan

applicant is under legal age, proof of legal emancipation will be required in order to lease.

- h. Any altered information and/or deliberate misinformation regarding income, current status, or past history will disqualify an applicant.
4. Once an application is approved, the manager will inform the applicant by phone and a unit will be assigned. At that time, the manager will also arrange a date for the lease signing, orientation, and move-in. The applicant will be informed of the amount of rent and the deposit payment, which must be paid before they can move in. These amounts will be confirmed in the lease agreement.
 5. Should an applicant not be approved, the manager will clearly document the reason for denial and will inform the applicant in writing (by mail) of the denial and the reasons.
 6. Once an applicant is placed on the (DEVELOPMENT'S NAME) waiting list the manager will notify them, in writing, within 10 days that they are on the list.

3.C. Waiting List Management

The manager will maintain a waiting list consisting of units for each size. All applicants who meet the aforementioned criteria will be ranked using the following point system, outlined in Chapter 8.68.050(D) of the City of Dublin Zoning Ordinance:

Employed within the boundaries of the City of Dublin for at least six months prior to application: three points (one per household)

Public service employee working in the City of Dublin (i.e., a person employed by a public agency of the City of Dublin): one additional point

Current resident of the City of Dublin for at least one year prior to application: three points (one per household)

Senior citizens: one point (one per household)

Permanently disabled citizens: one point (one per household)

Immediate family member of Dublin resident: one point (one per household)

Resident required to relocate from current residence in the City of Dublin due to demolition of dwelling or conversion of dwelling from rental to for-sale unit: one point (one per household)

Veteran: one point (one per household)

The procedure outlined by the City of Dublin shall guide the selection process described above. Please refer to City of Dublin Guidelines to the Inclusionary Zoning Regulations Ordinance for the full details

Exhibit 3. Sample Marketing and Sales Plan

of this procedure.

Qualified applicants will be chosen according to the ranking system outlined above to fill vacancies at (DEVELOPMENTS NAME).

The manager is responsible for keeping the waiting list up-to-date by sending a notice to persons on the waiting list semi-annually by mail, and enclosing a form for them to send back to the (DEVELOPMENT'S NAME) management office indicating whether they are interested in still being on the waiting list. Households from which no confirmation is received, or who indicate they no longer wish to be on the waiting list, will have their names removed from the list.

The manager will contact the three highest ranked qualified applicants on the waiting list when notice is provided that a unit is to become available. If the applicant indicates that they are no longer interested in living at (DEVELOPMENT'S NAME), they are removed from the waiting list and notified in writing of this action. Applicants who have valid reason for being unable to live at (DEVELOPMENT'S NAME), but request to remain on the list, are given two opportunities to refuse an offer to live at (DEVELOPMENT'S NAME) before being removed from the waiting list.

4. MONITORING AND REPORTING

Prior to move-in, the manager will create a resident file containing: the application, lease agreement and rules, unit move-in/move-out inspection form, and resident income and asset certification form. Residents' incomes are to be verified and certified annually to comply with the Affordable Housing Agreement.

This process will begin 90 days prior to a resident's annual certification date. The manager will request income and asset information from residents regarding their assets and anticipated income for that calendar year. They will also sign income and asset verification forms for third-party written verifications. Once all verifications are received, residents are required to sign a certification form that they have provided true and complete information about all sources and all amounts of their incomes.

Annual income and asset information will be maintained in resident's files, provided to the City of Dublin annually in the form of a spreadsheet, and made available for inspection by City staff as requested.

Exhibit 4. Management and Marketing Plan (sample)

(NAME OF DEVELOPMENT)

Management and Marketing Plan

TABLE OF CONTENTS

1. INTRODUCTION

1a. Project Description

(DEVELOPMENT NAME), located at (LOCATION) in the City of Dublin, is a (NUMBER OF UNITS)-unit development consisting of (NUMBER OF UNITS) one-bedroom units, (NUMBER OF UNITS) two bedroom units, and (NUMBER OF UNITS) three-bedroom units. The design is representative of the (ARCHITECTURAL STYLE TYPE) and has (DEVELOPMENT AMENITIES SUCH AS NUMEROUS OUTDOOR COMMUNITY COURTYARDS, WALKING PATHWAYS, TOT LOTS, LAUNDRY FACILITIES, GARAGES, AND/OR CARPORTS). Units at (DEVELOPMENT NAME) are affordable to individuals earning (PERCENTAGE OF MEDIAN) percent of the area median income for Alameda County.

Unit Mix

The following spreadsheet includes information on each affordable unit located in (DEVELOPMENT'S NAME). This is updated annually and/or as changes are made, and is delivered to the City during the annual monitoring process. This was last updated on (DD/MM/YYYY). **NOTE: This spreadsheet may be an attachment to this document if there are more than 30 units in the development.**

| Address/No. | # Bedrooms | Sq Ft. | Affordability Level | Subsidy Type (Section 8, TCAC, etc) | Rent Charged | Utility Allowance | Move-In Date |
|-------------|------------|--------|---------------------|-------------------------------------|--------------|-------------------|--------------|
| 125 | 2 | 1250 | Moderate | City-Only | \$2250 | \$145 | 7/15/2015 |
| 225 | 2 | 1250 | Low | TCAC & Section 8 | \$1200 | \$110 | 8/26/2014 |

1b. Project Ownership and Management

(DEVELOPMENT'S NAME) is owned by (OWNER NAME).

1c. Management Objectives

This management plan sets forth the general policies and procedures to be utilized at (DEVELOPMENT'S NAME) ensuring that the units continue to provide a high standard of housing for lower-income households in Dublin. (DESCRIBE OBJECTIVES).

This management plan will also be used by the City to remain aware of project policies, procedures, and contact information. This plan will be updated on an annual basis to include updated contact information and updated information on unit mixes and pricing. Each time project

Exhibit 4. Management and Marketing Plan

policies, procedures, or contact information changes, the appropriate sections of this plan will be updated.

2. MANAGEMENT ORGANIZATION, ROLES, and RELATIONSHIPS

2a. Management Contact

This section details contact information for both on-site and corporate management. The City may utilize this information to aid in the resolution of issues regarding compliance or tenant complaints. This information will be updated periodically as management contacts change to ensure the City has the correct contact information. This contact information was last updated on (DD/MM/YYYY).

On-Site Management

(RESPONSIBLE PERSON) is responsible for day-to-day management and maintenance of (DEVELOPMENT'S NAME). (RESPONSIBLE PERSON) will serve as the primary point of contact with the City of Dublin and will be available to respond to inquiries and communicate any issues with the City. The contact information for (RESPONSIBLE PERSON) is:

(RESPONSIBLE PERSON NAME)(TITLE)
(MAILING ADDRESS)
(PHONE NUMBER)
(EMAIL ADDRESS)

Management Company

(RESPONSIBLE PERSON FROM MANAGEMENT COMPANY) is (ON-SITE MANAGER'S) direct supervisor. (RESPONSIBLE PERSON FROM MANAGEMENT COMPANY) will serve as the secondary point of contact with the City of Dublin in the event that complaints or compliance issues require escalation due to:

- a. Lack of timely responses from on-site management;
- b. Tenant complaints with no resolution within 60 days;
- c. Compliance issues with no resolution within 60 days unless otherwise arranged; and/or
- d. Necessity of upper management intervention due to limited staffing or level of expertise (e.g. public health issues within the development).

2b. On-Site Management

(DEVELOPMENT'S NAME) has an on-site, full-time manager and (INSERT NUMBER OF ASSISTANT MANAGERS) assistant manager(s). The manager and assistant manager(s) are responsible for: handling the application process, applicant screening, and interviewing; applicant verifications; resident selection; waiting list management; new resident leasing and orientations; working with vendors and contractors; collecting, depositing, and recording rents and other fees; enforcing the lease and rules; submitting reports; cleaning the laundry rooms; effectively communicating with residents; and assisting with the provision of various resident amenities to help build a sense of community within (DEVELOPMENT'S NAME).

2c. Maintenance Staffing

(DEVELOPMENT'S NAME) has (NUMBER OF FULL-TIME MAINTENANCE WORKERS) full-time maintenance worker(s) and (NUMBER AND POSITIONS OF ANY ADDITIONAL MAINTENANCE STAFF MEMBERS). The maintenance staff is supervised by and reports to (NAME(S) AND/OR TITLE(S) OF PERSONS SUPERVISING THE MAINTENANCE STAFF).

Exhibit 4. Management and Marketing Plan

Maintenance staff performs routine, corrective, unit turnover, and preventative maintenance tasks. The maintenance staff is responsible for daily inspections of the property, landscaping maintenance and litter removal tasks, and for acting upon maintenance requests generated from the maintenance worker's own inspections, resident requests, and requests from the (SUPERVISORY MANAGEMENT TITLE(S)).

Employees will comply with all requirements of employment as well as the policies established by (DEVELOPMENT OWNER NAME). All employees are paid by (WHO) including state and federal payroll and unemployment taxes, FICA taxes, and all other costs of employment including workers compensation insurance, employee medical insurance, overtime pay, and any other compensation or related costs as applicable.

2d. Complaint Response Policy

NOTE: If development already has an implemented some form of the Complaint Response Policy, this section may be replaced with that policy.

In order to resolve tenant complaints in a timely matter, (DEVELOPMENT'S NAME) will utilize the following procedure in response to all inquiries:

1. Receive complaint via phone or email and record in complaint log along with the date the complaint was received.
2. Reach out to tenant to explore options for curing the complaint.
 - a. If necessary, contact the City to inquire if potential options are allowed pursuant to the Guidelines and procedures.
3. Work with tenant and/or outside entities to resolve the complaint within 15 working days.
 - a. Complaints that are directly related to urgent health or safety matters (i.e. apartment infrastructure) will be resolved immediately.
 - b. If necessary, contact (MANAGEMENT COMPANY CONTACT) to escalate the complaint and explore additional options for resolution.
 - c. Remain in contact with the tenant, periodically updating them on the process of resolving their complaint. This will ensure complaints are not escalated to City staff or the media.
 - i. Persistent complaints from tenants to the City will be escalated by City staff to upper management for (DEVELOPMENT'S NAME).
4. Contact tenant to ensure complaint was resolved adequately. Record complaint resolution and date in complaint log.

The City of Dublin will not be responsible for resolving or responding to complaints from tenants. All complaints from tenants should be handled internally. However, (DEVELOPMENT'S NAME) will periodically inform City staff of all major complaints and resolution processes (especially those related to health, safety, or compliance matters) in order to keep staff up-to-date on important matters.

3. MARKETING AND RESIDENT SELECTION

3a. Marketing

(LIST WHO) is responsible for the marketing of vacant units. The manager is responsible for lease-up, marketing, and administering the (DEVELOPMENT'S NAME) waiting list. When vacancies occur, names are taken from the waiting list based on the unit size available and the date and time of the application.

Exhibit 4. Management and Marketing Plan

It is (DEVELOPMENT OWNER'S NAME) policy that the marketing of vacant units shall maximize the opportunity of all persons, regardless of race, age, gender, sexual preference, religion, national origin, familial status, or disability.

Pursuant to the Affordable Housing Agreement entered into between the (DEVELOPMENT OWNER'S NAME ON THE AHA) and the City of Dublin, marketing and resident selection at (DEVELOPMENT'S NAME) shall be performed in conformance with the Inclusionary Zoning Regulations specified in Chapter 8.68 of the City of Dublin Zoning Ordinance. Provisions of this ordinance will be quoted in this document as appropriate below, and the complete text of this ordinance is to be attached to the end of this document.

The availability of BMR units at (DEVELOPMENT'S NAME) will be publicized on the development's website, on online classified listing websites, in local newspapers, and through local housing-related nonprofit organizations.

3b. Application, Screening, and Decision Processes

1. General Considerations for Units

- a. In screening and selecting applicants for units at (DEVELOPMENT'S NAME), there will be no discrimination based on race, religion, age, national origin, disability, familial status, gender, sexual preference, or any other arbitrary factor. All applicants are asked for the same information and treated in the same manner. The applicant screening and selection process is conducted in strict conformity with both the letter and spirit of all federal and state fair housing statutes. The manager will regularly receive in-service training and counseling regarding Fair Housing requirements. This training will be completed every (FREQUENCY) with (MANAGEMENT COMPANY or NAME OF EXTERNAL ORGANIZATION). New staff members will receive this training within 45 days of employment.
- b. All units are leased to qualified applicants based on appropriate size in relation to the number of household member.
- c. If the initial demand for units at (DEVELOPMENT'S NAME) at lease-up exceeds the number of available units, a procedure identical to that described for the administration of the waiting list will be used to determine which applicants are selected to fill the available units.
- d. Remaining units shall be leased by utilizing names taken from a pre-established waiting list based on the time and date the application was received.

2. Remaining Units

- a. At the time of lease-up and subsequently, if the waiting list is depleted for a particular unit size and income category, persons interested in living at (DEVELOPMENT'S NAME) will be given tours of vacant units and common areas by the manager during office hours or by appointment. At this time, the manager will provide basic information about rents, deposits, lease and rules provisions, and special income eligibility requirements. The manager will also provide prospective residents with a resident eligibility criteria sheet outlining the application and approval processes.
- b. Prospective residents interested in applying for a unit will be given a rental application and relevant income verification forms to sign. The application includes detailed information regarding the persons who will reside in the unit, household income, employment (if applicable), present and prior residences, references, and other information needed for the manager to perform necessary screening and prioritization of the application. The manager will explain how to fill out the application and answer any questions applicants might have. If necessary, the manager will arrange for a translator to

Exhibit 4. Management and Marketing Plan

assist applicants and the manager to communicate when they do not share a common language.

- c. Applications are submitted to the management office. At the time of application, the manager is to review the application to verify that it is complete. If the application is not complete, it is to be returned to the applicant with a request to provide the missing information as soon as possible. Once the information needed to screen the application is provided, the date and time the application has been accepted is written on the front of the application and the application is appropriately categorized.
- d. At the time of application acceptance for an available unit, the manager will advise the applicant that they will be contacted within 10 days to set up a preliminary interview. The manager will also determine whether the applicant needs to provide any other information or sign income/asset verifications that will assist the process of eligibility screening. Any gaps in the dates provided in the rental history section of the application must be explained at the preliminary interview. At the time of the preliminary interview, the manager will ask to see and take copies of the applicant's identification (e.g., California driver's license or identification card, Social Security card or resident alien identification card) to confirm the applicant's correct identity. The manager will verify that the driver's license, identification, and Social Security numbers match those stated on the application.
- e. Prior to move-in, the (WHO) is responsible for obtaining confirmation of third-party income and asset verifications to confirm that the applicant is eligible under the requirements of the Affordable Housing Agreement. Other types of income and resident status verifications, such as Social Security, public assistance, and legal resident status will be requested by mail or in person on forms provided by the manager and signed by the applicant. Gross annual household income will be calculated in accordance with the City's Guidelines to the Inclusionary Zoning Regulations Ordinance.
- f. Incomes may not exceed the current (PERCENTAGE)% of area median income, adjusted for household size, which are published annually by the California Department of Housing and Community Development (HCD). Each year, the (PROPERTY MANAGER) will receive a memo from the City of Dublin with updated income, rent, and utility allowance limits. The (PERSON RESPONSIBLE FOR INCOME VERIFICATIONS) may refer directly to the website of HCD to inquire about updated income limits prior to receiving the distribution from City staff. Once all verifications of all sources of income and assets have been received, the manager will total income from all sources. The manager will verify that these amounts are at or below the latest published maximum amounts.
- g. Once an applicant is being considered for an available unit, the manager will request a credit report to obtain information about the applicant's credit and rental history.
- h. The manager is responsible for calling the applicant's present and former landlords (or property managers) to determine the applicant's suitability as a resident of (DEVELOPMENT'S NAME). The manager will document all interviews and application screening information in writing. If current and former landlords cannot be contacted by phone, the manager will mail written questionnaires, accompanied by self-addressed stamped envelopes.
- i. Applicants will not be informed of the status of their application until income verifications are complete.
- j. Once the income verifications have been obtained and references checked, and all verifications are no more than 90 days old, the manager will schedule a final interview with all members of the applicant household. This interview is used to clarify and/or confirm any other information found during the reference checks. At this interview, any conflicting information found during the verification process and reference checks will be clarified and resolved. Expectations of resident responsibilities and behavior, as

Exhibit 4. Management and Marketing Plan

embodied in the (DEVELOPMENT NAME) lease and rules, will be discussed at this time.

3. The following set of standard criteria are to be used as a guide to select residents after all interview and reference check information has been taken into consideration and is applied consistently and fairly to all candidates.
 - a. Applicant must have a verified total gross income below (PERCENTAGE)% of the current area median income, as applicable, adjusted for household size.
 - b. Applicant's ratio of rent-to-actual income for the requested apartment unit should not exceed 45%.
 - c. If the applicant is a full-time student who is unmarried and not eligible to file a joint federal income tax return, and who is not in a training program pursuant to Title IV of the Social Security Act, or similar federal, state, or local approved education or training programs designed to help people end their use of public assistance programs, the applicant household is ineligible to live in a BMR unit. "Full-time student" means someone who attends school at least five months per year for the number of hours or courses which constitute full-time attendance. Part-time students are eligible.
 - d. Applicant must be able to provide sufficient residential information for at least the past two years to enable the manager to adequately evaluate rental history and/or place of screening. Any gaps in the dates provided in the rental history section of the application may result in the need for additional residential history.
 - e. Negative rental history will be grounds for rejection, including:
 - i. Applicant owes delinquent rent or fees for damages to current landlord;
 - ii. Applicant left owing rent or owing money for damaged property to former landlord(s);
 - iii. Recurring applicant problems with delinquent payments
 - iv. Recurring noise/disturbance problems during applicant residency;
 - v. Recurring problems where any member of household was inconsiderate, violent, or abusive toward other residents or management personnel in current or past residences;
 - vi. Applicant exhibited serious/poor housekeeping problems which represented health or safety hazards to others;
 - vii. Applicant has had an exceptionally unstable and unexcused rental history during the past two years;
 - viii. Applicant was evicted for cause, within the past three years;
 - f. Other grounds of rejection include:
 - i. Negative credit history, including credit accounts in arrears, unpaid judgments and/or applicant having declared bankruptcy.
 - ii. Inability to demonstrate a history of paying rent at prior residences.
 - iii. The unit the applicant is applying for would not be the applicant's sole residence.
 - iv. Applicant's household size either exceeds or is below reasonable occupancy limits for the available unit.
 - v. Applicant was unable to provide identification that verified their identity or legal residency.
 - vi. Applicant submitted an incomplete application and has not taken steps to remedy.
 - vii. Applicant has provided false, inconsistent, or inaccurate information on their application.
 - viii. Applicant had two unexcused failures to attend to an agreed-upon time for an application appointment or interview.

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- ix. Applicant was abusive or uncooperative with management during the application process. History of behavioral problems related to criminal activity that makes applicant a poor risk.
 - g. At least one person in the household must be of legal age to execute a lease (age 18). If the applicant is under legal age, proof of legal emancipation will be required to lease.
 - h. Any altered information and/or deliberate misinformation regarding income, status, or past history will disqualify an applicant.
- 4. Once an application is approved, the manager will inform the applicant by phone and a unit will be assigned. At that time, the manager will also arrange a date for the lease signing, orientation, and move-in. The applicant will be informed of the amount of rent and the deposit payment. These amounts will be confirmed in the lease agreement.
- 5. Should an applicant not be approved, the manager will clearly document the reason for denial and will inform the applicant in writing (by mail) of the denial and the reasons.
- 6. Once the applicant is placed on the (DEVELOPMENT'S NAME) waiting list, the manager will notify them, in writing, within 10 days that they are on the list.
- 7. In the event of a management error in initial or annual certification that incorrectly renders an applicant unqualified and unable to move into the unit they applied for, (MANAGEMENT CONTACT) will contact the City of Dublin to discuss remedies to the situation.

3c. Waiting List Management (IF PREFERENCE POINT SYSTEM IS USED)

The manager will maintain a waiting list consisting of units for each size. All applicants who meet the criteria will be ranked using the following point system, outlined in Chapter 8.68.050(D) of the City of Dublin Zoning Ordinance:

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| Type | Points | Proof Required |
|-----------------------------------|-----------------------------|---|
| Work in Dublin | 3 (maximum 1 per household) | Copy of first and most recent pay stub establishing length of employment; or Letter from employer, on company letterhead, indicating continuous employment for the past six months; or If self-employed in Dublin, then the business must have a current City business license for at least 6 months at the time of application. |
| Public Service Employee in Dublin | 1 additional | Copy of first and most recent pay stub establishing length of employment; or Letter from employer, on company letterhead, indicating continuous employment for the past six months; or For a newly hired teacher at a State-accredited school, who will be working in Dublin, a copy of employment contract; and A letter from employer confirming employment and employer contact information. |
| Live in Dublin | 3 | Copy of two utility bills (PG&E or water), one from at least one year ago and one most recent utility bill both showing the applicant with a Dublin address; or Copy of a current rental agreement. |
| Senior Citizens | 1 | A valid State driver license; or A valid State identification card (with photo); or A valid passport. |
| Permanently Disabled | 1 | Doctor's note confirming that applicant is permanently disabled; or Other verification from a state agency establishing permanent disability status; or Verification of receipt of SSI or SSDI. |
| Immediate Family Member in Dublin | 1 | Copy of two utility bills (PG&E or water), one from at least one year ago and one most recent utility bill both showing the immediate family member with a Dublin address; or Copy of the immediate family member's current rental agreement; and A copy of birth certificates for self and immediate family member, establishing relationship; or Other legal document establishing relationship. |
| Displaced | 1 | Letter from apartment owner or management firm verifying the imminent condominium conversion or demolition of the unit; and Confirmation from the City's Community Development Department. |
| Veteran | 1 | A military department record of service such as an original military service record or certified copy. The document must contain the length, time, and character of the service. |

Exhibit 4. Management and Marketing Plan

The procedure outlined by the City of Dublin shall guide the selection process at lease up. The (INSERT RESPONSIBLE PARTY) will refer to the City of Dublin Guidelines to the Inclusionary Zoning Regulations Ordinance for the full details of this procedure.

Qualified applicants will be chosen according to the ranking system outlined above to fill vacancies at (DEVELOPMENT'S NAME).

The manager is responsible for keeping the waiting list up-to-date by sending a notice to persons on the waiting list semi-annually by mail, and enclosing a form for them to send back to the (DEVELOPMENT'S NAME) management office indicating whether they are interested in still being on the waiting list. Households from which no confirmation is received, or who indicate they no longer wish to be on the waiting list, will have their names removed from the list.

The manager will contact the three highest ranked qualified applicants on the waiting list when notice is provided that a unit is to become available. If the applicant indicates that they are no longer interested in living at (DEVELOPMENT'S NAME), they are removed from the waiting list and notified in writing of this action. Applicants who have valid reason for being unable to live at (DEVELOPMENT'S NAME), but request to remain on the list, are given two opportunities to refuse an offer to live at (DEVELOPMENT'S NAME) before being removed from the waiting list.

3d. Amenities and Add-Ons (MAY BE REMOVED IF NOT APPLICABLE)

BMR tenants will have access the following amenities at no additional cost:

- (NOTE AMENITIES HERE. i.e. Washer/Dryer, Pool Access, etc).

BMR tenants will have the option to purchase access to the following amenities on a (FREQUENCY) basis:

(NOTE OPTIONAL AMENITIES HERE: Large Garage, Storage, etc).

4. Rent Increases

Rent increases will occur no more than once per year on the anniversary of the last re-certification date. Rent increases are limited to the Maximum Monthly Rents, as established by HCD and published annually by the City of Dublin. If the tenant is required to pay for utilities, this maximum rent must be reduced by the appropriate Utility Allowance as noted in Section 3b(2).

All rent increases must be completed in accordance with noticing requirements for the State of California, as outlined in Civil Code 827. This includes a minimum 30-day notice for all rent increases between 0-10%, and a minimum 60-day notice for rent increases greater than 10%.

More information about these requirements is located at:

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV§ionNum=827.

5. Monitoring and Reporting

4a. General Procedures

Prior to move-in, the manager will create a resident file containing: the application, lease agreement and rules, unit move-in/move-out inspection form, and resident income and asset certification form. The process will begin 90 days prior to a resident's annual certification date.

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The manager will request income and asset information from residents regarding their assets and anticipated income for that calendar year. They will also sign income and asset verification forms for third-party written verifications. Once all verifications are received, residents are required to sign a certification form that they have provided true and complete information about all sources and all amounts of their incomes.

Annual income and asset information will be maintained in resident's files, provided to the City of Dublin annually in the form of a spreadsheet, and made available for inspection by City staff as requested.

4b. BMR Program Training

(MANAGEMENT COMPANY) will train (RESPONSIBLE PERSON FROM MANAGEMENT COMPANY) in all aspects of the BMR program in accordance with the Guidelines to the Inclusionary Zoning Ordinance. (MANAGEMENT COMPANY) will secure training from outside entities to provide a general overview of the BMR program. This training will be provided by:

- (ENTITIES/ORGANIZATIONS THAT PROVIDE TRAINING)
 - i.e. TCAC, Neighborworks, HUD, etc.

This training will not serve as a substitute for all knowledge that is specific to the City of Dublin, including income calculations and monitoring procedures. After completing general training in rental BMR program management, the (RESPONSIBLE PERSON FROM MANAGEMENT COMPANY) will review all material that is relevant the City of Dublin's BMR Rental Program, including:

- Chapter 8.68 of the City of Dublin Municipal Code, "Inclusionary Zoning Regulations"
- The Guidelines to the Inclusionary Zoning Ordinance
- Annual Rent and Income Limits
- (DEVELOPMENT'S NAME) Affordable Housing Agreement

Once (RESPONSIBLE PERSON FROM MANAGEMENT COMPANY) has received external training and has reviewed all program material, they have the option of contacting City staff for additional training information. If the (RESPONSIBLE PERSON FROM MANAGEMENT COMPANY) is unsure of procedures of the BMR management company, the (RESPONSIBLE PERSON FROM MANAGEMENT COMPANY) will immediately contact City staff to ensure compliance with the program. City staff will not be responsible for conducting alternate income calculations or handling resident files, and are available only for questions regarding policies and procedures.

Exhibit 5. Good Faith Marketing Efforts Information



CITY OF DUBLIN
BMR Good Faith Marketing Efforts

Overview

Owners of Below Market Rate (BMR) for-sale units within the City of Dublin must comply with certain procedures when reselling an ownership BMR Unit as further set forth in either the “Resale Restriction Agreement and Option to Purchase” (RRA) or “Loan, Occupancy, Refinancing and Resale Restriction Agreement” (LORRA) entered into between the BMR Owner and the City, as applicable. In addition, BMR Unit Owners are required to undertake “**good faith marketing efforts**” in the marketing of their BMR Units, as specified in the “City of Dublin Guidelines to the Inclusionary Zoning Regulations Ordinance” at Section 6.4.2 (BMR Unit Marketing) as adopted by the City of Dublin City Council and found at the City’s website at www.dublin.ca.gov/housing/guidelines.

BMR Unit Marketing

BMR Unit Owners shall follow current best practices for home marketing. Compliance with the following provisions constitutes a good faith marketing effort:

1. **BMR Unit condition** – The BMR Unit shall be offered for sale in a condition similar to or better than at the time of the BMR Unit Owner’s purchase. Alterations that may result in a reduction in value (such as removal of walls, bedrooms, or bathrooms, or downgrades to appliances, flooring, or finishes) shall be corrected prior to the initiation of BMR Unit marketing.
2. **Professional representation** – The BMR Unit Owner shall execute a listing agreement with an active realtor, currently licensed by the California Bureau of Real Estate.
3. **Listing** – The BMR Unit shall be listed as an active property on the Multiple Listing Service (MLS) maintained by the East Bay Association of Realtors. The listing shall include the following:
 - **BMR Unit photographs** – at least one exterior photograph and at least three well-lit interior photographs of the BMR Unit in keeping with current industry practices.
 - **Property data** – pertinent data including, but not limited to asking price (at or below the maximum restricted resale price) location, square footage, number of bedrooms, number of bathrooms, unit features and amenities, development features and amenities, current amount of homeowner’s association dues (if applicable), and information about parking spaces and restrictions.
 - **BMR Unit statement** – a clear statement that the home is a BMR Unit subject to resale controls, monitoring, and other restrictions. The statement must state



CITY OF DUBLIN
BMR Good Faith Marketing Efforts

that potential buyers must meet income and other requirements and include the correct income levels, the eligible household sizes, and the requirement the buyer must be a 1st time homebuyer, obtain loan pre-approval and a homebuyer education certificate. The listing must note the Offer Acceptance Due Date. The statement must comply with language requirements contained in the **Required Multiple Listing Service Language** information sheet. **(See attached.)**

Language for a one (1) Bedroom home.

- **Sample MLS Language** – Below Market Rate home subject to resale controls, monitoring & other restrictions. Unit must be owner-occupied by 1-2 person household; must be 1st time homebuyer/income-eligible. No Investors. Max income: 1=\$81,850; 2=\$93,500; Open houses 12/10 (12-4pm); 12/13 (7-9pm); Offers and loan pre-approval deadline 12/19 @ noon to Realtor ofc. Contact Realtor for City BMR Application.

Language for a two (2) Bedroom home.

- **Sample MLS Language** – Below Market Rate home subject to resale controls, monitoring & other restrictions. Unit must be owner-occupied by 2-4 person household; must be 1st time homebuyer/income-eligible. No Investors. Max income: 2=\$93,500; 3=\$105,200; 4=\$116,900. Open houses 12/10 (12-4pm); 12/13 (7-9pm); Offers and loan pre-approval deadline 12/19 @ noon to Realtor ofc. Contact Realtor for City BMR Application.

4. **Professional showings** – The BMR Unit Owner and agent shall make the home available for showings including a broker's open, weekend open houses, and individual showings with interested buyers and agents representing interested buyers. **At least two open houses must be held, one on a weekday evening and one on a weekend day.**
5. **Offer Acceptance Due Date** – The BMR Unit Owner and agent shall set an Offer Acceptance Due Date that is at least five (5) days after the date of the second unit showing.
6. **City of Dublin website** – The BMR Unit Owner shall provide information on the BMR Unit to the Housing Division to advertise the resale on the City of Dublin's website.

Attachment:

1) Required Multiple Listing Service Language Sheet

Exhibit 6. Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants (sample)

Exhibit 6. Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants

requested by and when
recorded mail to:

City of Dublin
100 Civic Plaza
Dublin, CA 94568
Attn: City Clerk

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's Use



**SECONDARY UNIT REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS**

Owner: **Name**

Property Address: **Address, Lot #
Dublin, CA 94568**

Name of Development: **Development**

This Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants (this "Agreement") is entered into effective as of **Date** ("Effective Date") by and between the City of Dublin, a public body, corporate and politic ("City") and **Owners, as appear on title** (the "Owner"). City and Owner are hereinafter collectively referred to as the "Parties."

Recitals

A. Owner is the owner of certain real property that contains a secondary dwelling unit, which is located in the City of Dublin, County of Alameda, State of California and more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Property"). The Property is located within a residential development project area (the "Project") that was subject to the City's Inclusionary Zoning Regulations (Chapter 8.68 of the Dublin Municipal Code), which requires that developments consisting of 20 or more residential units must include a specified percentage of units that are subject to affordability restrictions set forth in a binding agreement recorded against the property.

B. The developer of the Project chose to satisfy its obligations through among other things the construction of secondary units on some of the residential lots in the Project, including on the Property, and requiring the purchasers to enter into regulatory agreements restricting the rents charges for the secondary units to affordable rents, in accordance with the Inclusionary Zoning Regulations.

C. The Parties have agreed to enter into and record this Agreement in order to satisfy the requirements described in the foregoing Recitals. The purpose of this Agreement is to regulate and restrict the occupancy and rents of the Property's Restricted Unit (defined

Exhibit 6. Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants

below) for the benefit of the occupants. The covenants in this Agreement are intended to run with the land and be binding on Owner and its successors and assigns for the full term of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the Parties hereby agree as follows:

1. Definitions. The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

"Applicable Income Level" means the annual gross income level specified below:

- ☐ Very-low income: 50% or less of Area Median Income.
- ☐ Low-income: 50% to 80% of Area Median Income.
- ☐ Moderate-income: 80% to 120% of Area Median Income.

"Area Median Income" or "AMI" means the area median income for Alameda County, California, adjusted for household size, published periodically by the California Department of Housing and Community Development ("HCD") in Section 6932 of Title 25 of the California Code of Regulations ("Regulations") or successor provision published.

"Eligible Household" means a household whose gross income does not exceed the Applicable Income Level and that is otherwise eligible to rent a Restricted Unit.

"Qualifying Rent" means a monthly rent which does not exceed one-twelfth of thirty percent (30%) of the Applicable Income Level adjusted for household size, less a utility allowance as specified by the Housing Authority of Alameda County.

"Restricted Unit" means the secondary dwelling unit on the Property that is depicted in Exhibit B and that is reserved for occupancy at a Qualifying Rent in accordance with and as set forth in Section 2.

2. Use and Affordability Restrictions. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of City.

2.1 Affordability Requirements. The Restricted Unit, if it is rented, shall be rented at not more than Qualifying Rent and occupied by Eligible Households. Owner shall ensure that language is contained in all leases and contracts with tenants executed by Owner that prohibits subleasing of the Restricted Unit.

2.2 Rents for Restricted Units. Rent charged to, and paid by, a tenant for Restricted Units shall be not more than Qualifying Rent. Notwithstanding the foregoing, no tenant qualifying for a Restricted Unit shall be denied continued occupancy of the Restricted Unit because, after admission, such tenant's adjusted income increases to exceed the qualifying limit for such Restricted Unit.

Exhibit 6. Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants

2.3 Non-Discrimination; Compliance with Fair Housing Laws. Owner shall not discriminate against persons or groups of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, familial status, ancestry or national origin in the lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property. Owner shall ensure that language prohibiting such discrimination shall be included in all deeds, leases and contracts executed by Owner or its successors and assigns with respect to the Property. Owner shall comply with state and federal fair housing laws in the marketing and rental of the units in the Property.

3. Reporting Requirements.

3.1 Tenant Verification. Owner or its authorized agent shall obtain from each household prior to initial occupancy of each Restricted Unit, and on every anniversary thereafter, written documentation verifying each tenant's eligibility containing all of the following, including additional documentation as City may reasonably require (collectively hereinafter "Written Verification"):

- (a) Number of people in the household; and
- (b) Total household income.

Owner or its authorized agent shall retain Written Verification for not less than three (3) years, and upon City's request, shall make the Written Verification available for inspection by City and shall provide copies of the Written Verification to City. Owner or its authorized agent may require each Eligible Household to certify the Written Verification.

3.2 Annual Report; Inspections. Owner shall submit an annual report ("Annual Report") to the City in conformity with the requirements of Section 8.68.050.B of the Inclusionary Zoning Regulations, together with a certification that the Property is in compliance with the requirements of this Agreement. The Annual Report shall, at a minimum, include the following information: (i) identification of the Restricted Unit by address; (ii) the monthly rents charged and proposed to be charged; (v) the number of people residing in the unit; and (vi) the total household income of residents. Upon City's request, Owner shall include with the Annual Report, a copy of the Written Verification Owner obtained pursuant to Section 3.1 above, and such additional information as City may reasonably request from time to time in order to show compliance with this Agreement. Owner shall permit representatives of City to enter and inspect the Property during reasonable business hours in order to monitor compliance with this Agreement upon 24 hours advance notice of such visit to Owner.

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect in perpetuity.

4.2 Effectiveness Succeeds Conveyance of Property. This Agreement shall remain effective and fully binding for the full term hereof regardless of any sale, assignment, transfer, or conveyance of the Property, unless this Agreement is terminated earlier by City in a recorded writing.

Exhibit 6. Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants

4.3 Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge the terms of this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement in accordance with its terms.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Property to the covenants and restrictions set forth in this Agreement. The City and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and City, regardless of any sale, assignment, conveyance or transfer of the Property or any part thereof or interest therein. Each reference in this Agreement to a specifically named party shall be deemed to mean a reference to the successor of each such Party. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property (other than the tenants of the individual dwelling units within the Property) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby.

Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property in favor of City.

6. Property Management; Repair and Maintenance; Marketing.

6.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Property, including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Except as City may otherwise agree in writing, City shall have no responsibility for management or maintenance of the Property. The contracting of management services to a management entity shall not relieve Owner of its primary responsibility for proper performance of management duties.

6.2 Intentionally Omitted.

6.3 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Property in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Property (including without limitation, the residential units, common areas, landscaping, driveways and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same

Exhibit 6. Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants

from occurring on the Property. Owner shall prevent and/or rectify any physical deterioration of the Property and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair.

6.4 Intentionally omitted.

6.5 Intentionally omitted.

6.6 Intentionally omitted.

6.7 Intentionally omitted.

6.8 Property Damage or Destruction. If any part of the Property is damaged or destroyed, Owner shall repair or restore the same as soon as practicable, consistent with the occupancy and rent restriction requirements set forth in this Agreement.

7. Recordation; No Subordination. This Agreement shall be recorded in the Official Records of Alameda County. Owner hereby represents, warrants and covenants that with the exception of easements and restrictions of record, absent the written consent of City, this Agreement shall not be subordinated in priority to any lien (other than those pertaining to taxes or assessments), encumbrance, or other interest in the Property. If at the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded against the Property in position superior to this Agreement, upon the request of City, Owner hereby covenants and agrees to promptly undertake all action necessary to clear such matter from title or to subordinate such interest to this Agreement consistent with the intent of and in accordance with this Section, and to provide such evidence thereof as City may reasonably request. Subordination of this Agreement shall result in a \$200 fee to be paid to the City at the close of escrow.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer. During the term of this Agreement, except as permitted pursuant to this Agreement, Owner shall not make or permit the occurrence of any conveyance, sale or lease (except as to individual dwelling units) of the Property without the prior written consent of the City; provided however City shall not withhold its consent to the sale, transfer or other disposition of the Property, in whole or in part, provided that (i) the transferee expressly assumes all obligations of Owner imposed by this Agreement; (ii) the transferee executes all documents reasonably requested by the City with respect to the assumption of the Owner's obligations under this Agreement; and (iii) the Owner has paid the City a Affordable Home Ownership Fee to cover the City's costs associated with the transaction. The amount of the Affordable Home Ownership Fee is currently \$872 per transaction, and the applicable amount shall be as established from time to time by the City Council

8.2 Encumbrances. Owner agrees to use best efforts to ensure that any deed of trust secured by the Property shall contain each of the following provisions: (i) the holder of such deed of trust shall use its best efforts to provide to City a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner (provided however, the failure to do so shall not impair such holder's rights and remedies); and (ii) City shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure, extended by an additional thirty (30) days.

Exhibit 6. Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants

8.3 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Property that such violation has occurred.

9. Default and Remedies.

9.1 Events of Default. Owner's failure to cure any default in performance of Owner's obligations under this Agreement within thirty (30) days following City's delivery of a notice of default shall constitute an Event of Default hereunder and shall entitle the City to proceed with any of the remedies described below. Notwithstanding the foregoing, if the default is such that it is not reasonably capable of being cured within thirty (30) days, an Event of Default shall not arise hereunder if Owner commences to cure the default within 30 days and thereafter prosecutes the curing of such default to completion with due diligence and in good faith, but in no event later than ninety (90) days after receipt of City's notice of default or such longer period as City may agree to in writing.

(a) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;

(b) For violations of obligations with respect to rents for Restricted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Qualifying Rent;

(c) Pursue any other remedy allowed at law or in equity.

9.2 Remedies Cumulative. Each of the remedies provided herein is cumulative and not exclusive. The City may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

10. Indemnification. Owner shall defend (with counsel approved by City), indemnify and hold the City and its officials, officers, directors, employees, and agents (collectively, the "Indemnified Parties") harmless from and against any and all losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including reasonable attorneys' fees) arising from or in connection with or in any way related to: (i) Owner's performance or failure to perform any obligation required by this Agreement; or (ii) any act or omission by Owner, or any of Owner's contractors, subcontractors, agents, employees, licensees or suppliers related to the Property, except to the extent arising from the gross negligence or willful misconduct of such Indemnified Party. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

11. Miscellaneous.

11.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

Exhibit 6. Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants

11.2 No Waiver. Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- (a) personal delivery, in which case notice is effective upon delivery;
- (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt;
- (c) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;
- (d) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

City:

City of Dublin
100 Civic Plaza
Dublin, CA 94568
Attention: City Clerk & Housing Division
HousingInfo@dublin.ca.gov

Owner:

Owner
Address
Dublin, CA 94568

11.4 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

11.5 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

11.6 Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted

Exhibit 6. Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants

under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the City Council.

11.7 Non-Liability of City and City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.

11.8 Headings; Construction. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party.

11.9 Time is of the Essence. Time is of the essence in the performance of this Agreement.

11.10 Governing Law. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

11.11 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

11.12 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.13 Entire Agreement; Exhibits. This Agreement contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. The exhibits attached hereto are incorporated herein by this reference.

11.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE.

Exhibit 6. Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first written above.

OWNER

Owner

Owner

CITY OF DUBLIN

Christopher L. Foss, City Manager

ATTEST:

Anastasia Nelson, Deputy City Clerk

SIGNATURES MUST BE NOTARIZED.

Exhibit 7. Secondary Unit Performance Deed of Trust (sample)

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

City of Dublin
Attn: City Clerk
100 Civic Plaza
Dublin, CA 94568

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(Space Above This Line for Recorder's Use)

**PERFORMANCE DEED OF TRUST, ASSIGNMENT OF RENTS, FIXTURE
FILING AND SECURITY AGREEMENT**

City of Dublin
Affordable Housing Program – Restricted Secondary Unit

**THERE ARE RESTRICTIONS ON THE USE OF THE PROPERTY
ENCUMBERED BY THIS DEED OF TRUST. RENTAL OF THE SECONDARY
UNIT ON THIS PROPERTY IS LIMITED TO INCOME-ELIGIBLE
HOUSEHOLDS AT A QUALIFYING RENT PURSUANT TO THE CITY OF
DUBLIN'S AFFORDABLE HOUSING PROGRAM. CERTAIN LIMITATIONS
APPLY TO THE SALE OF THIS PROPERTY.**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, FIXTURE FILING
AND SECURITY AGREEMENT (this "**Deed of Trust**") is made as of
D("Effective Date") by OWNER (s) as they appear on title, to (collectively,
"**Trustor**") to the City of Dublin (the "**Trustee**") whose business address is 100
Civic Plaza, Dublin, CA 94568, for the benefit of the City of Dublin, a municipal
corporation ("**Beneficiary**").

RECITALS

A. Trustor is the owner of the real property located at Property
address in the City of Dublin, California 94568 and more particularly described in
the attached Exhibit A (the "**Property**").

B. In accordance with City of Dublin Affordable Housing Program
("**Program**") requirements, Trustor and Beneficiary entered into that certain
Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants

(“**Secondary Unit Regulatory Agreement**”) dated as of the Effective Date and recorded in the Official Records of Alameda County substantially concurrently herewith (the “**Secondary Unit Regulatory Agreement**”).

C. The secondary unit rental restrictions set forth in this Deed of Trust and in the Secondary Unit Regulatory Agreement are intended to effectuate the requirements of the Program.

D. Among other provisions, the Secondary Unit Regulatory Agreement provides that (i) if rented, the restricted secondary unit must be rented at or below the Qualifying Rent to Eligible Households (ii) Trustor is subject to certain recording requirements; and (iii) there are limitations on the sale of the Property.

E. Capitalized terms used and not defined in this Deed of Trust have the meaning ascribed to them in the Secondary Unit Regulatory Agreement.

NOW THEREFORE, to secure full and timely performance by Trustor of the Secured Obligation, it is agreed as follows:

1. Grant in Trust. Trustor, in consideration of the promises herein recited and the trust herein created, hereby irrevocably and unconditionally grants, transfers, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all of Trustor’s right, title and interest now held or hereafter acquired in and to the following:

(a) all of that certain real property located at _____ in Dublin, California 94568, which is more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the “**Land**”);

(b) all buildings, improvements and fixtures now or hereafter erected on the Property and all replacements and additions thereto (“**Improvements**”);

(c) all easements, rights of way, appurtenances and other rights used in connection with the Property or as a means of access thereto (“**Appurtenances**”);

(d) all fixtures now or hereafter attached to or used in and about the Property or the Improvements or hereafter located or constructed on the Property, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to the Improvements in any manner (“**Fixtures and Equipment**”); and

(e) all leases, subleases, licenses and other agreements relating to use or occupancy of the Property (“**Leases**”) and all rents or other payments which may now or hereafter accrue or otherwise become payable to or for the benefit of

Trustor ("**Rents**") (whether or not such Leases and Rents are permitted pursuant to the Secondary Unit Regulatory Agreement).

All of the above-referenced Property, Improvements, Appurtenances, Fixtures and Equipment, Leases and Rents are herein referred to collectively as the "**Security.**"

2. Obligations Secured. This Deed of Trust is given for the purpose of securing performance of all of the following (the "**Secured Obligations**"): (i) all present and future obligations of Trustor set forth in this Deed of Trust or in the Secondary Unit Regulatory Agreement; (ii) all additional present and future obligations of Trustor to Beneficiary under any other agreement or instrument acknowledged by Trustor (whether existing now or in the future) which states that it is or such obligations are, secured by this Deed of Trust; (iv) all modifications, supplements, amendments, renewals, and extensions of any of the foregoing, whether evidenced by new or additional documents; and (v) reimbursement of all amounts advanced by or on behalf of Beneficiary to protect Beneficiary's interests under this Deed of Trust.

3. Assignment of Rents, Issues, and Profits. Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary the rents, royalties, issues, profits, revenue, income and proceeds of the Property. This is an absolute assignment and not an assignment for security only. Beneficiary hereby confers upon Trustor a license to collect and retain such rents, royalties, issues, profits, revenue, income and proceeds as they become due and payable prior to any Event of Default hereunder. Upon the occurrence of any such Event of Default, Beneficiary may terminate such license without notice to or demand upon Trustor and without regard to the adequacy of any security for the indebtedness hereby secured, and may either in person, by agent, or by a receiver to be appointed by a court, enter upon and take possession of the Property or any part thereof, and sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, to any indebtedness secured hereby, and in such order as Beneficiary may determine. Beneficiary's right to the rents, royalties, issues, profits, revenue, income and proceeds of the Property does not depend upon whether or not Beneficiary takes possession of the Property. The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and/or is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder. Regardless of whether or not Beneficiary, in person or

by agent, takes actual possession of the Land and Improvements, Beneficiary shall not be deemed to be a "mortgagee in possession," shall not be responsible for performing any obligation of the lessor under any Lease, shall not be liable in any manner for the Property, or the use, occupancy, enjoyment or operation of any part of it, and unless due solely to the willful misconduct or gross negligence of Beneficiary, shall not be responsible for any dangerous or defective condition of the Property or any negligence in the management, repair or control of the Property.

4. Fixture Filing. This Deed of Trust is intended to be and constitutes a fixture filing pursuant to the provisions of the Uniform Commercial Code ("UCC") with respect to all of the Property constituting fixtures, is being recorded as a fixture financing statement and filing under the UCC, and covers property, goods and equipment which are or are to become fixtures related to the Land and the Improvements. Trustor covenants and agrees that this Deed of Trust is to be filed in the real estate records of Alameda County and shall also operate from the date of such filing as a fixture filing in accordance with Section 9502 and other applicable provisions of the UCC. This Deed of Trust shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to the UCC, as amended. Trustor shall be deemed to be the "debtor" and Beneficiary shall be deemed to be the "secured party" for all purposes under the UCC. The full name of Trustor and the mailing address of Trustor are set forth in Section 8.7 of this Deed of Trust.

5. Trustor Representations, Warranties And Covenants

5.1. Trustor's Estate. Trustor represents and warrants that Trustor is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property. Trustor agrees to warrant and defend generally the title to the Property against all claims and demands subject to any declarations, easements, or restrictions listed in the schedule of exceptions to coverage in any title insurance policy insuring Beneficiary's interest in the Property.

5.2 Performance of Covenants. Trustor will observe and perform all of Trustor's covenants and agreements set forth in the Secondary Unit Regulatory Agreement, this Deed of Trust, and all other instruments secured by the Property.

5.3 Maintenance of the Property. Trustor agrees: (a) to keep the Property in good repair and in decent, safe, sanitary, habitable condition and permit no waste thereof; (b) to repair, restore or rebuild promptly any Improvements that may be damaged or destroyed while subject to the lien of this Deed of Trust; (d) to comply with all applicable laws, ordinances and governmental regulations affecting the Property or requiring any alteration or improvement thereof, and not to suffer or permit any violations of any such law, ordinance or governmental regulation, nor of any covenant, condition or

restriction affecting the Property; and (e) not to initiate or acquiesce in any change in any zoning or other land use or legal classification which affects any of the Property without the Beneficiary's written consent. If there arises a condition in contravention of this Section, and if the Trustor has not cured such condition within thirty (30) days after receiving a notice from Beneficiary of such a condition, then in addition to any other rights available to Beneficiary, Beneficiary shall have the right (but not the obligation) to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property to recover its cost of cure.

5.4 Appear and Defend. Trustor shall appear in and defend any action or proceeding purporting to affect the Property or the rights or powers of the Beneficiary or Trustee, and shall pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which the Beneficiary or Trustee may appear, and in any suit brought by the Beneficiary to foreclose this Deed of Trust.

5.5 Charges; Liens. Trustor shall pay prior to delinquency all taxes, assessments, and other charges, fines, and impositions affecting the Property directly to the payee thereof. Upon request of Beneficiary, Trustor shall promptly furnish to Beneficiary copies of all notices of such amounts due and shall promptly furnish to Beneficiary receipts evidencing all such payments made. Trustor shall pay when due each obligation secured by or reducible to a lien, charge or encumbrance which now does or later may encumber or appear to encumber all or part of the Property or any interest therein, whether or not such lien, charge or encumbrance is or would be senior or subordinate to this Deed of Trust. Trustor shall not be required to pay any tax, charge or assessment so long as Trustor is actively contesting its validity in good faith and by appropriate legal proceedings which will operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof. Trustor shall post security for the payment of such contested claims as may be requested by the Beneficiary.

5.6 Insurance. Trustor shall keep the Land and the Improvements insured by a standard all-risk property insurance policy in an amount equal to the replacement value of the Property with loss payable to the Beneficiary. The insurance carrier providing such insurance shall be licensed to do business in the State of California and may be chosen by Trustor, subject to approval by Beneficiary. All insurance policies and renewals thereof will be in a form acceptable to the Beneficiary, and will include a standard mortgagee clause with standard lender's endorsement in favor of the holder of any senior lien and the Beneficiary as their interests may appear and in a form acceptable to the Beneficiary. The Beneficiary shall have the right to hold, or cause its designated agent to hold, the policies and renewals thereof, and Trustor shall promptly furnish to the Beneficiary, or its designated agent, the original insurance policies or certificates of insurance, all renewal notices and all receipts of paid premiums. In the event of loss, Trustor will give prompt notice to the insurance carrier and

the Beneficiary or its designated agent. The Beneficiary, or its designated agent, may make proof of loss if not made promptly by Trustor. The Beneficiary shall receive thirty (30) days advance written notice of the cancellation, expiration or termination or any material change in the coverage afforded by any of the insurance policies required under this Section.

Unless otherwise permitted by the Beneficiary in writing, insurance proceeds, subject to the rights of the holder of any senior lien, will be applied to restoration or repair of the Property damaged. If the Property is abandoned by Trustor, or if Trustor fails to respond to the Beneficiary, or its designated agent, within thirty (30) days from the date notice is mailed by either of them to Trustor that the insurance carrier offers to settle a claim for insurance benefits, the Beneficiary, or its designated agent, is authorized to collect and apply the insurance proceeds at the Beneficiary's option either to restoration or repair of the Property or to pay amounts due under the Secondary Unit Regulatory Agreement.

If the Property is acquired by the Beneficiary, all right, title and interest of Trustor in and to any insurance policy and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition will pass to the Beneficiary to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition, subject to the rights of the holder of any senior lien.

Renewal policies and any replacement policies, together with premium receipts satisfactory to the Beneficiary, shall be delivered to the Beneficiary at least thirty (30) days prior to the expiration of existing policies. Neither Trustee nor the Beneficiary shall by reason of accepting, rejecting, approving or obtaining insurance incur any liability for the existence, nonexistence, form or legal sufficiency of such insurance, or solvency of any insurer for payment of losses.

6. IT IS MUTUALLY AGREED THAT:

6.1. Protection of Beneficiary's Security. If Trustor fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Beneficiary's interest in the Property, including, but not limited to, default under any senior lienholder document, eminent domain, insolvency, code enforcement, arrangements or proceedings involving a bankrupt or decedent, foreclosure of any mortgage secured by the Property or sale of the Property under a power of sale of any instrument secured by the Property, then Beneficiary, at Beneficiary's option, without releasing Trustor from any obligation hereunder, may upon notice to Trustor, make such appearance, disburse such sums and take such action as is necessary to protect Beneficiary's interest, including, but not limited to, the purchase of insurance, disbursement of reasonable attorneys' fees and entry upon the Property to make repairs. Any amounts disbursed by Beneficiary

pursuant to this Section, with interest thereon, shall become additional indebtedness of Trustor secured by this Deed of Trust. Unless Trustor and Beneficiary agree to other terms of payment, such amounts shall be payable upon notice from Beneficiary to Trustor requesting payment thereof, and shall bear interest from the date of disbursement at the highest rate permissible under applicable law. Nothing contained in this Section shall require Beneficiary to incur any expense or take any action hereunder.

6.2 Inspection. Beneficiary or its agent may make or cause to be made reasonable entries upon and inspections of the Property. Beneficiary shall give Trustor reasonable notice prior to any such inspection.

6.3 Awards and Damages. Subject to the rights of senior lienholders, all judgments, awards of damages, settlements and compensation made in connection with or in lieu of (a) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (b) any damage to or destruction of the Property or any part thereof by insured casualty, and (c) any other injury or damage to all or any part of the Property, are hereby assigned to and shall be paid to the Beneficiary. The Beneficiary is authorized and empowered (but not required) to collect and receive any such sums and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Beneficiary shall determine at its option. The Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the Beneficiary may be released to Trustor upon such conditions as the Beneficiary may impose for its disposition. Application of all or any part of the amounts collected and received by the Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust. If the Property is abandoned by Trustor, or if, after notice by Beneficiary to Trustor that the condemnor offers to make an award or settle a claim for damages, Trustor fails to respond to Beneficiary within thirty (30) days after the date such notice is mailed, Beneficiary is authorized to collect and apply the proceeds, at Beneficiary's option, either to restoration or repair of the Property or to the sum secured by this Deed of Trust.

6.4 Prohibition on Transfers of Interest. With the exception of the transfers permitted pursuant to Section 6.9 below, if all or any part of the Property or an interest therein is sold or transferred by Trustor without Beneficiary's prior written consent, Beneficiary may, at Beneficiary's option, declare all sums secured by this Deed of Trust to be immediately due and payable. If Beneficiary exercises such option to accelerate, Beneficiary shall mail Trustor notice of acceleration in accordance with Sections 7.2 and 8.7 hereof. Such notices shall provide a period of not less than 30 days from the date the notice is mailed within which Trustor may pay the sums declared due. If Trustor

fails to pay such sums prior to the expiration of such period, Beneficiary may, without further notice or demand on Trustor, invoke any remedies permitted by Section 7.2(a) hereof.

6.5 Sale or Forbearance. No sale of the Property, forbearance on the part of Beneficiary or extension of the time for payment of the indebtedness hereby secured shall operate to release, discharge, waive, modify, change or affect the liability of Trustor either in whole or in part.

6.6 Beneficiary's Rights to Release. Without affecting the liability of any person for payment of any indebtedness hereby secured (other than any person released pursuant hereto), including without limitation any one or more endorsers or guarantors, and without affecting the lien hereof upon any of the Property not released pursuant hereto, at any time and from time to time without notice: (a) Beneficiary may in its sole discretion: (i) release any person now or hereafter liable for payment of any or all such indebtedness, (iii) extend the time for or agree to alter the terms of payment of any or all of such indebtedness, and (iii) release or accept additional security for such indebtedness, or subordinate the lien or charge hereof; and (b) Trustee, acting pursuant to the written request of the Beneficiary, may reconvey all or any part of the Property, consent to the making of any map or plot of the Land, join in granting any assessment thereon, or join in any such agreement of extension or subordination.

6.7 Reconveyance. Upon payment of all sums and satisfaction of all obligations secured by this Deed of Trust (including without limitation, the satisfaction of all obligations set forth in the Secondary Unit Regulatory Agreement, Beneficiary shall request Trustee to reconvey the Property and shall surrender this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any. The recitals in the reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

6.9 Permitted Transfers. Subject to compliance with the terms and conditions set forth in the Secondary Unit Regulatory Agreement, the following transfers shall not be deemed to be a default hereunder:

(a) The transfer of the Property to a surviving joint tenant by devise, descent or operation of the law, on the death of a joint tenant.

(b) A transfer of the Property where the spouse or domestic partner of Trustor becomes a co-owner of the Property.

(c) A transfer of the Property resulting from a decree of dissolution of marriage, legal separation or from an incidental property settlement agreement by which the spouse of Trustor becomes an owner of the Property.

(d) A transfer to an inter vivos or living trust in which the Trustor is and remains the beneficiary of the trust and the occupant of the Property.

7. EVENTS OF DEFAULT

7.1 Events of Default. Any one or more of the following events shall constitute a default under this Deed of Trust:

- (a) Rental of the Secondary Unity to a household that does not qualify as an Eligible Household.
- (b) Rental of the Secondary Unit at a monthly rent that exceeds the Qualifying Rent.
- (c) The sale, conveyance, encumbrance or other transfer of the Property in violation of the Secondary Unit Regulatory Agreement.
- (d) An event of default arises under any other loan secured by the Property and such default remains uncured following the expiration of any applicable cure period.
- (e) Trustor encumbers or refinances the Property in violation of the Secondary Unit Regulatory Agreement.
- (f) Trustor fails to pay real estate taxes, assessments or homeowner's association dues, when due, or Owner fails to maintain insurance in such amounts as required under this Agreement, and such event or condition shall not have been cured within thirty (30) days following the date of written notice of default from Beneficiary.
- (g) Trustor fails to observe or perform any other covenant, condition, or agreement to be observed or performed by Trustor pursuant to this Deed of Trust, and Trustor fails to cure such default within 30 days following the date of written notice of default from Beneficiary.
- (g) An event of default arises under the Secondary Unit Regulatory Agreement.
- (h) Trustor declares bankruptcy or makes an assignment of assets for the benefit of creditors.

7.2 Acceleration and Sale.

(a) Default; Remedies. Upon Trustor's breach of any covenant or agreement of Trustor under the Secondary Unit Regulatory Agreement or this Deed of Trust (including without limitation, Trustor's encumbrance or refinancing of the Property in violation of the foregoing agreements) Beneficiary shall mail notice to Trustor as provided in Section 8.7 hereof specifying: (i) the nature of the breach; (ii) the action required to cure such breach; (iii) a date no less than thirty (30) days from the date the notice is mailed to Trustor by which such breach must be cured; and (iv) that failure to cure such breach on or before the date specified in the notice may result in the sale of the Property. The notice shall further inform Trustor of Trustor's right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Trustor to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Beneficiary at Beneficiary's option may: (a) declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and invoke the power of sale; (b) commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants set forth herein; (d) deliver to the Trustee a written declaration of default and demand for sale pursuant to the provisions for notice of sale found at California Civil Code Sections 2924 *et seq.*, and (c) pursue any other remedy permitted under California law. Beneficiary shall be entitled to collect from the Trustor, or from the proceeds of the sale of the Property, all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorneys' fees.

(b) Trustor's Right to Reinstate. Trustor will have the right to have any proceedings begun by Beneficiary to enforce this Deed of Trust discontinued at any time prior to five (5) days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of the judgment enforcing this Deed of Trust if: (a) Trustor pays Beneficiary all sums which would be then due under this Deed of Trust had no acceleration occurred; (b) Trustor pays all reasonable expenses incurred by Beneficiary and Trustee in enforcing the covenants and agreements of Trustor contained in this Deed of Trust, including, but not limited to, reasonable attorneys' fees; (c) Trustor cures all breaches of any other covenants or agreements of Trustor set forth in the Secondary Unit Regulatory Agreement, and (d) Trustor takes such action as Beneficiary may reasonably require to assure that the lien of this Deed of Trust, Beneficiary's interest in the Property and Trustor's obligation to pay the sums and perform the obligations secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Trustor, this Deed of Trust and the obligations secured hereby will remain in full force and effect as if no acceleration had occurred.

(c) Sale. After delivery to Trustee of a Notice of Default and Demand for Sale and after the expiration of such time and the giving of such notice of default and sale as may then be required by law, and without demand on Trustor, Trustee shall sell the Property at the time and place of sale fixed by it in said notice of sale, at public auction to the highest bidder for cash in lawful money of the United States of America, payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale and from time to time thereafter may postpone such sale by public announcement at the time and place fixed by the preceding postponement. Any person, including Trustor, Trustee or the Beneficiary, may purchase at such sale. Upon such sale by Trustee it shall deliver to such purchaser its deed conveying the Property so sold, but without any covenant or warranty expressed or implied. The recitals in such deed of any matters or facts shall be conclusive proof of their truthfulness. Upon sale by Trustee and after deducting all costs, expenses and fees of Trustee, Trustee shall apply the proceeds of sale to the payment of the indebtedness hereby secured, including any advances made or costs or expenses paid or incurred by Beneficiary under this Deed of Trust, any indebtedness evidenced by any other instrument hereby secured, and all other sums then secured hereby, in such order as the Beneficiary shall direct; and then the remainder, if any, shall be paid to the person or persons legally entitled thereto.

(d) Assignment of Rents; Appointment of Receiver; Beneficiary in Possession. Upon acceleration under Section 7.2(a) or abandonment of the Property, Beneficiary (in person, by agent or by judicially appointed receiver) shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property (if any) including those past due. All rents collected by Beneficiary or the Receiver shall be applied first to payment of the costs of management of the Property and collection of rents including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Beneficiary and the receiver shall be liable to account only for those rents actually received. The provisions of this paragraph and Section 7.2(a) shall operate subject to the claims of prior lien holders.

7.3 Remedies Cumulative; No Waiver. No exercise of any right or remedy by the Beneficiary or Trustee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law, and no delay or forbearance by the Beneficiary or Trustee in exercising any such right or remedy hereunder shall operate as a waiver thereof or preclude the exercise thereof in any continued or subsequent default hereunder. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or any other document, or afforded by law or equity, and may be exercised concurrently, independently or successively.

7.4 Trustee Substitution. The irrevocable power to appoint a substitute trustee or trustees hereunder is hereby expressly granted to the Beneficiary, to be exercised at any time hereafter, without specifying any reason therefore, by filing for record in the office where this Deed of Trust is recorded a deed of appointment, and said power of appointment of successor trustee or trustees may be exercised as often as and whenever the Beneficiary deems advisable. The exercise of said power of appointment, no matter how often, shall not be deemed an exhaustion thereof, and upon recording of such deed or deeds of appointment, the trustee or trustees so appointed shall thereupon, without further act or deed of conveyance, succeed to and become fully vested with identically the same title and estate in and to the Property hereby conveyed and with all the rights, powers, trusts and duties of the predecessor in the trust hereunder, with the like effect as if originally named as trustee or as one of the trustees.

8. MISCELLANEOUS PROVISIONS

8.1 Successors and Assigns. The covenants and agreements contained in this Deed of Trust shall bind, and the benefit and advantages hereunder shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties; provided however, nothing in this Section is intended to or shall modify any restrictions on assignment set forth herein or in the Secondary Unit Regulatory Agreement. As used herein, the words "the Beneficiary" means the present Beneficiary or any future owner or holder, including a pledgee of the indebtedness secured hereby.

8.2 Headings; Gender, Number. The captions and headings used in this Deed of Trust are inserted only for convenience of reference and in no way define, limit, or describe the scope or intent of this Deed of Trust, or of any particular provision thereof, or the proper construction thereof. Wherever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders.

8.3 Approvals in Writing. Except as otherwise specifically provided herein, whenever any approval, notice, direction, consent, request or other action by the Beneficiary is required or permitted under this Deed of Trust, such action shall be in writing.

8.4 Joint and Several Obligations. If more than one person has executed this Deed of Trust as Trustor, the obligations of all such persons hereunder shall be joint and several.

8.5 Severability. If any provision of this Deed of Trust shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

Exhibit 7. Secondary Unit Performance Deed of Trust

8.6 Indemnification. Trustor agrees to indemnify, defend (with counsel approved by Beneficiary) and hold the Beneficiary, its elected and appointed officers, officials, agents and employees (“Indemnitees”) harmless from and against any and all losses, damages, claims, actions, demands, judgments, penalties, costs and expenses (including reasonable attorneys’ fees) and liabilities (all of the foregoing, collectively “Claims”) which the Indemnitees may sustain or suffer directly or indirectly as a result of or arising in connection with (i) Trustor’s failure to perform any obligations as and when required by the Secondary Unit Regulatory Agreement or this Deed of Trust, (ii) the failure at any time of any of Trustor’s representations and warranties to be true and correct, or (iii) any action or omission by Indemnitees in connection with this Deed of Trust, except to the extent any such Claim arises due to the gross negligence or willful misconduct of Indemnitees.

8.7 Notices. Except for any notice required under applicable law to be given in another manner (a) any notice to Trustor provided for in this Deed of Trust shall be given by mailing such notice by certified mail directed to the Property address or any other address Trustor designates by notice to Beneficiary as provided herein; and, (b) any notice to Beneficiary shall be given by certified mail, return receipt requested, to Beneficiary’s mailing address stated herein or to such other address as Beneficiary may designate by notice to Trustor as provided herein. Any notice provided for in this Deed of Trust shall deem to have been given to Trustor or Beneficiary when given in the manner designated herein.

Beneficiary: City of Dublin
100 Civic Plaza
Dublin, CA 94568
Attn: City Clerk & Housing Division
HousingInfo@dublin.ca.gov

Trustor: First Name and Last Name
123 Main Street
Dublin, CA 94568

8.8 Beneficiary Statement. Beneficiary may collect a fee for furnishing the beneficiary statement in an amount not to exceed the amount as provided by Section 2943 of the Civil Code of California.

8.9 Governing Law. This Deed of Trust shall be governed by the laws of the State of California.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first written above.

TRUSTOR

Signature

Signature

SIGNATURES MUST BE NOTARIZED.

2691416.2